APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 51

UNITED STATES OF AMERICA, *Appellant*

—v.—

JOSEPH FRANCIS NARDELLO and ISADORE WEISBERG

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED MARCH 29, 1968
PROBABLE JURISDICTION NOTED JUNE 17, 1968

Supreme Court of the United States

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—v.—

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INDEX

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CRIMINAL DOCKET

Criminal No. 22709

THE UNITED STATES

vs.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY,
JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

Interstate travel in aid of
racketeering enterprises; conspiracy

DATE	PROCEEDINGS
1966	
Nov. 30	True Bill.
1967	
Feb. 28	Petition and Order for writ of habeas corpus ad pros as to Wm. Joseph Burke, filed. Writ exit
Mar. 3	Defendant William Joseph Burke sworn and testifies as to his financial responsibility. The Court appoints Melvin Dildine to represent deft under the Criminal Justice Act of 1964
Mar. 3	PLEAS: Wm. Joseph Burke—NOT GUILTY on Counts 1 and 2 Joseph Francis Nardello—NOT GUILTY on Count 2 Isadore Weisberg—NOT GUILTY on Count 2
Mar. 3	Defendant Sherman Chadwick Kaminsky called and not appearing, bail forfeited and bench warrant to issue Warrant exit
Mar. 3	Appearance of F. Emmett Fitzpatrick, Jr., Esq., for Isadore Weisberg, filed.

DATE	PROCEEDINGS
1967	
Mar. 8	Appearance of Domenick Vitullo, Esq., for Joseph F. Nardello, filed.
Mar. 8	Bond of Sherman Chadwick Kaminsky in the sum of $10,000.00, with the Prudence Mutual Casualty Co, as surety, transferred to this case from C.R. 18438.
Mar. 8	Order of Court appointing Voluntary Defender to represent Wm. Jos. Burke under the Criminal Justice Act of 1964, filed.
Mar. 15	Motion of Isadore Weisberg to dismiss indictment, filed.
Mar. 15	Motion of Joseph Francis Nardello to dismiss indictment, filed.
Apr. 7	Arraignment continued
Apr. 12	Court Reporter's tape as to W. J. Burke et al (pleas) 3/3/67 filed in special envelope No. 130
Apr. 17	Writ of Habeas Corpus returned "on 4-13-67 produced" and filed.
Apr. 28	Transcript of 4-7-67 filed.
Aug. 8	Argued sur defts. Weisburg and Nardello's motions to dismiss Indictment C.A.V. CW
1968	
Jan. 4	Opinion, Weiner, J. and Order (dated 1/2/68) Granting motions of Defts. Isadore Weisberg and J. F. Nardello to dismiss, and dismissing indictment as to those two defts., filed. CRW (1/5/68 entered and notice mailed)
Jan. 8	Notice of appeal of U.S. Government, filed. (Copy mailed to F. Emmett Fitzpatrick, Jr., Esq. and A. Charles Peruto, Esq. and Melvin Dildine, Esq.)
Jan. 8	Copy of Statement of Docket Entries filed.

DATE	PROCEEDINGS
1968	
Jan. 30	Govt's notice of appeal to the Supreme Court of the U.S., filed. Proof of service, filed.
Mar. 22	Certified copy of Order of U.S. Court of Appeals dismissing appeal as to Joseph Francis Nardello, filed.
Mar. 22	Certified copy of Order of U.S. Court of Appeals dismissing appeal of Govt as to Isadore Weisberg, filed.
Mar. 26	Certified copy of record transmitted to the United States Supreme Court
June 21	Certified copy of Order of Supreme Court of U.S. noting probable jurisdiction, filed.

CRIMINAL DOCKET

Criminal No. 22717

THE UNITED STATES

vs.

SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, JOSEPH FRANCIS NARDELLO, CHARLES ANDERSON

Interstate travel in aid of racketeering enterprises; conspiracy

DATE	PROCEEDINGS
1966	
Nov. 30	True Bill.
1967	
Mar. 3	Defendant Charles Anderson sworn and testifies as to his financial responsibility. The Court appoints Melvin Dildine, Esq., to represent deft under the Criminal Justice Act of 1964
Mar. 3	PLEAS:. Joseph Francis Nardello—NOT GUILTY on Counts 1 and 2 Charles Anderson—GUILTY on Count 2 Kenneth Warren Smith—NOT GUILTY on Counts 1 and 2 Bail as to Kenneth W. Smith reduced from $7500.00 to $2500.00 good bail. Charles Anderson continued on own bond Arraignment continued as to Hammock
Mar. 3	Defendant Sherman Cadwick Kaminsky called and not appearing, bail forfieted and bench warrant to issue Warrant exit
Mar. 3	Appearance of A. Charles Peruto, Esq., for J. F. Nardello, filed.

DATE	PROCEEDINGS
1967	
Mar. 3	Bond of defendant Sherman Chadwick Kaminsky in the sum of $10,000.00, with the Prudence Mutual Casualty Co. as surety, transferred to this case from C.R. 18438
Mar. 8	Order of Court appointing Voluntary Defender to represent Charles Anderson under the Criminal Justice Act of 1964, filed. FVD
Mar. 8	Order of Court appointing Voluntary Defender to represent Kenneth Warren Smith under the Criminal Justice Act of 1964, filed. FVD
Mar. 15	Motion of Joseph Francis Nardello to dismiss indictment, filed.
Apr. 12	Court Reporter's tape re pleas, 3/3/67, filed in special envelope No. 130.
Apr. 28	Sentence as to Charles Anderson continued FVD
May 19	SENTENCE as to Charles Anderson: FVD Count 2—Imprisonment for 5 years for study under 18 USC 4208(b), report to be furnished to the Court within 3 months
May 19	Consent to transfer case of U.S. vs. Elwood Lee Hammock under Rule 20 to the USDC for the Southern District of NEW York, filed.
May 24	Certified copies of indictment and consent to transfer under Rule 20 as to Elwood Lee Hammock mailed to U.S.D.C. for the Southern District of New York
June 15	Judgment and Commitment as to Charles Anderson, filed. FVD
June 23	Judgment and Commitment as to C. Anderson returned "on 6-21-67 delivered" and filed.
July 17	Court Reporter's tape re sentencing of C. Anderson of May 19, 1967 filed in special envelope No. 136.

DATE	PROCEEDINGS
1967	
July 17	Court Reporter's tape of Sentence continued, of C. Anderson of April 28, 1967 filed in special envelope. No. 137
Aug. 8	Argued sur: deft. Nardello's motion to dismiss Indictment C.A.V. CW
Aug. 23	FINAL SENTENCE: as to Charles Anderson Imposition of sentence suspended—probation five years beginning as of 5/19/67 FVD
Aug. 25	Order re final sentence as to Charles Anderson, imposed 8/23/67, filed. FVD
Nov. 7	Transcript of 8/23/67, filed.
Nov. 14	Order transferring jurisdiction of probationer Charles Anderson to USDC for the Northern District of Alabama, filed. FVD
Nov. 16	Certified copy of record as to Charles Anderson mail to Clerk, USDC for the Northern District of Alabama at Birmingham, Ala.
1968	
Jan. 4	Copy of Opinion, Weiner, J. and Order (dated 1/2/68) Granting motion to deft. J. F. Nardello to dismiss, and dismissing indictment as to this deft., filed. (1/5/68 entered and notice mailed) CRW
Jan. 8	Copy of Notice of appeal of U.S. Government, filed. (Copies mailed to A. Charles Peruto, Esq. and Melvin Dildine, Esq.) (Original filed in #22709)
Jan. 8	Copy of Statement of Docket Entries, filed.
Jan. 30	Copy of Govt's notice of appeal to the Supreme Court of the U.S., filed. (Crim. #22709 original)
Mar. 22	Copy of Order of U.S. Court of Appeals dismissing appeal of Govt as to Joseph Francis Nardello, filed.
Mar. 26	Certified copy of record transmitted to the Supreme Court of the United States
June 21	Certified copy of Order of Supreme Court of U.S. noting probable jurisdiction, filed. (22709)

CRIMINAL DOCKET

Criminal No. 22718

THE UNITED STATES

vs.

SHERMAN CHADWICK KAMINSKY, ISADORE WEISBERG, JOSEPH FRANCIS NARDELLO

Interstate travel in aid of racketeering enterprises; conspiracy

DATE	PROCEEDINGS
1966	
Nov. 30	True Bill.
Nov. 30	Motion and Order for bench warrant as to Isadore Weisberg filed. Warrant exit. CWK
Dec. 1	Bond of Isadore Weisberg in the sum of $1000.00, with the Southern General Ins. Co. as surety, filed.
Dec. 5	Warrant as to Isadore Weisberg returned: "Executed", and filed.
1967	
Mar. 3	PLEAS:
	Isadore Weisberg—NOT GUILTY on Count 2 FVD
	Joseph Francis Nardello—NOT GUILTY on Count 2
	Both defendants have two weeks to file any motions
Mar. 3	Sherman Chadwick Kaminsky called and not appearing, bail forfieted and bench warrant to issue Warrant exit FVD
Mar. 3	Appearance of F. Emmett Fitzpatrick, Jr., Esq., for Isadore Weisberg, filed. (#22709)

DATE		PROCEEDINGS
1967		
Mar.	8	Appearance of A. Charles Peruto, Esq., for J. F. Nardello, filed.
Mar.	8	Bond of Sherman Chadwick Kaminsky in the sum of $10,000.00, with the Prudence Mutual Casualty Co. as surety, transferred to this case from C.R. 18438.
Mar.	15	Motion of Isadore Weinberg to dismiss indictment, filed.
Mar.	15	Motion of Joseph F. Nardello to dismiss indictment, filed.
Aug.	8	Argued sur: motions of defts. Weisburg & Nardello to dismiss indictment C.A.V. CW
1968		
Jan.	4	Copy of Opinion, Weiner, J. and Order (dated 1/2/68) Granting motion of defts Isadore Weisborg and J. F. Nardello to dismiss, and dismissing indictment as these two defts., filed. (1/5/68 entered and notice mailed) CRW
Jan.	8	Copy of Notice of appeal of U.S. Government, filed. (Copies mailed to A. Charles Peruto and F. Emmett Fitzpatrick, Jr., Esqs.) (Original filed in #22709)
Jan.	8	Copy of Statement of Docket Entries, filed.
Jan.	30	Copy of Govt's notice of appeal to the Supreme Court of the U.S., filed. (Original #22709)
Mar.	22	Copy of Order of U.S. Court of Appeals dismissing appeal of gvt as to Joseph Francis Nardello, filed.
Mar.	22	Copy of Order of U.S. Court of Appeals dismissing appeal of govt as to Isadore Weisberg, filed.
Mar.	26	Certified copy of record transmitted to the Supreme Court of the United States
June	21	Certified copy of Order of Supreme Court of U.S. noting probable jurisdiction, filed. (22709)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 22709

Filed: 11-30-66

UNITED STATES OF AMERICA

v.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

Interstate travel in aid of racketeering enterprises; conspiracy

INDICTMENT

COUNT I

THE GRAND JURY CHARGES:

That on or about the 1st day of June, 1964, in the Eastern District of Pennsylvania, the defendants, WILLIAM JOSEPH BURKE and SHERMAN CHADWICK KAMINSKY, did knowingly, wilfully and unlawfully travel in interstate commerce from Chicago, Illinois to Philadelphia, in the Eastern District of Pennsylvania, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, to wit, blackmail by injuring the reputation and business, in violation of Section 4802 of the Pennsylvania Penal Code and blackmail by accusation of a heinous crime, in violation of Section 4803 of the Pennsylvania Penal Code; and, thereafter, the defendants, WILLIAM JOSEPH BURKE and SHERMAN CHADWICK KAMINSKY, did perform and attempt to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of said unlawful activity.

In violation of Title 18 United States Code, Section 1952.

COUNT II

THE GRAND JURY FURTHER CHARGES:

1. From on or about the 25th day of May, 1964, and up to and including the 8th day of June, in the Eastern District of Pennsylvania and elsewhere, the defendants, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG, and WILLIAM JOSEPH BURKE, hereinafter called defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, to commit offenses against the United States, in violation of Title 18 United States Code, Section 1952 and Section 2.

2. It was part of the said conspiracy that the defendants met together and discussed the extortion of a victim.

3. It was further a part of said conspiracy that the defendants, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG, and WILLIAM JOSEPH BURKE travelled to Easton, Pennsylvania, and met with the victim.

4. It was further a part of the said conspiracy that the defendants, SHERMAN CHADWICK KAMINSKY and WILLIAM JOSEPH BURKE represented to the victim that they were detectives of the Philadelphia Department of Police and had a warrant for his immediate arrest.

5. It was further a part of the said conspiracy that the defendants did travel in interstate commerce and use facilities in interstate commerce, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity of blackmail, in violation of the laws of the Commonwealth of Pennsylvania; and, thereafter, the defendants did perform and attempt to perform acts facilitating the promotion, management, establishment, and carrying on of said unlawful activity.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants did commit the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. That on the 25th day of May, 1964, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO and WILLIAM JOSEPH BURKE met.

2. On the 1st day of June, 1964, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, WILLIAM JOSEPH BURKE, and ISADORE WEISBERG met with the aforesaid victim.

3. That on or about the 2nd day of June, 1964, SHERMAN CHADWICK KAMINSKY, ISADORE WEISBERG, JOSEPH FRANCIS NARDELLO and WILLIAM JOSEPH BURKE obtained $5,000.00 from the aforesaid victim.

In violation of Title 18 United States Code, Section 371 and Section 2.

A TRUE BILL:

(s)
Foreman

(s)
DREW J. T. O'KEEFE
United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 22717

Filed: 11-30-66

UNITED STATES OF AMERICA

v.

SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, JOSEPH FRANCIS NARDELLO, CHARLES ANDERSON

Interstate travel in aid of racketeering enterprises; conspiracy

INDICTMENT

COUNT I

THE GRAND JURY CHARGES:

That on or about the 6th day of August, 1965, in the Eastern District of Pennsylvania, the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO, did knowingly, wilfully and unlawfully travel in interstate commerce from New Jersey to Philadelphia, in the Eastern District of Pennsylvania, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, to wit, blackmail by injuring the reputation and business, in violation of Section 4802 of the Pennsylvania Penal Code and blackmail by accusation of a heinous crime, in violation of Section 4803 of the Pennsylvania Penal Code; and, thereafter, the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO did perform and attempt to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity.

In violation of Title 18 United States Code, Section 1952.

COUNT II

THE GRAND JURY FURTHER CHARGES:

1. From on or about the 2nd day of August, 1965, up to and including the 6th day of August, 1965, in the Eastern District of Pennsylvania and elsewhere, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, JOSEPH FRANCIS NARDELLO and CHARLES ANDERSON, hereinafter called defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, to commit offenses against the United States, in violation of 18 United States Code, Section 1952 and Section 2.

2. It was part of the said conspiracy that the defendants did meet together and discuss possible extortion victims in the Philadelphia area.

3. It was further part of the said conspiracy that CHARLES ANDERSON, defendant and co-conspirator, did obtain a compromising position with a victim and thereafter take from said victim his identification papers and wallet.

4. It was further a part of the said conspiracy that the defendant CHARLES ANDERSON did deliver the identity papers and wallet of the victim to the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO.

5. It was further a part of the said conspiracy that the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD HAMMOCK, and KENNETH WARREN SMITH, did exhibit to the said victim false credentials of the Philadelphia Police Department and purport to have a warrant for the arrest of said victim.

6. It was further a part of the said conspiracy that the defendants did travel in interstate commerce and use facilities in interstate commerce, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment, and carrying on of the un-

lawful activity of blackmail, in violation of the laws of the Commonwealth of Pennsylvania, and thereafter, the defendants did perform and attempt to perform acts facilitating the promotion, management, establishment and carrying on of said unlawful activity.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants did commit the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. That on about the 2nd day of August, 1965, the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, JOSEPH FRANCIS NARDELLO and CHARLES ANDERSON, met at the Wilson Motel in Camden, New Jersey.

2. On or about the 4th day of August, 1965, the defendant, CHARLES ANDERSON, obtained the wallet and identification papers of the aforementioned victim and delivered this wallet and papers to the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO.

3. On or about the 6th day of August, 1965, the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO, drove from Camden, New Jersey to Philadelphia, Pennsylvania, and the defendants KAMINSKY, HAMMOCK and SMITH had a conversation with the victim.

In violation of Title 18 United States Code, Section 371 and Section 2.

A TRUE BILL:

(s)
Foreman

(s)
DREW J. T. O'KEEFE
United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 22718-

Filed: 11-30-66

UNITED STATES OF AMERICA

v.

SHERMAN CHADWICK KAMINSKY, ISADORE WEISBERG, JOSEPH FRANCIS NARDELLO

Interstate travel in aid of racketeering enterprises; conspiracy

INDICTMENT

COUNT I

THE GRAND JURY CHARGES:

That on or about the 13th day of May, 1965, in the Eastern District of Pennsylvania, SHERMAN CHADWICK KAMINSKY, defendant, did knowingly, wilfully, and unlawfully travel in interstate commerce from Chicago, Illinois to Philadelphia, in the Eastern District of Pennsylvania, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, to wit, blackmail by injuring the reputation and business, in violation of Section 4802 of the Pennsylvania Penal Code and blackmail by accusation of a heinous crime, in violation of Section 4803 of the Pennsylvania Penal Code; and, thereafter, the defendant, SHERMAN CHADWICK KAMINSKY, did perform and attempt to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity.

In violation of Title 18 United States Code, Section 1952.

COUNT II

THE GRAND JURY FURTHER CHARGES:

1. From on or about the 10th day of May 1965, and up to and including the 15th day of May, 1965, in the Eastern District of Pennsylvania and elsewhere, SHERMAN CHADWICK KAMINSKY, ISADORE WEISBERG, and JOSEPH FRANCIS NARDELLO, hereinafter called defendants, unlawfully, wilfully, and knowingly did combine, conspire, confederate and agree together and with each other, to commit offenses against the United States, in violation of 18 United States Code, Section 1952 and Section 2.

2. It was part of the said conspiracy that the defendant, JOSEPH FRANCIS NARDELLO, did telephone the defendant, SHERMAN CHADWICK KAMINSKY, for the purpose of acquainting himself with a potential extortion victim in the Philadelphia area.

3. It was further a part of the said conspiracy that ISADORE WEISBERG did meet with SHERMAN CHADWICK KAMINSKY at the defendant, NARDELLO's office for the purpose of acquainting KAMINSKY with the background of a potential victim.

4. It was further a part of the said conspiracy that the defendant, SHERMAN CHADWICK KAMINSKY, did exhibit to the said victim false credentials of the Philadelphia Police Department and indicate to the victim that he was subject to immediate arrest.

5. It was further a part of said conspiracy that the defendants did travel in interstate commerce and use facilities in interstate commerce, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity of blackmail, in violation of the laws of the Commonwealth of Pennsylvania; and, thereafter, the defendants did perform and attempt to perform acts facilitating the promotion, management, establishment, and carrying on of said unlawful activity.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants did commit the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. On or about the 12th day of May, 1965, JOSEPH FRANCIS NARDELLO placed a telephone call to SHERMAN CHADWICK KAMINSKY.

2. On or about the 13th day of May, 1965, SHERMAN CHADWICK KAMINSKY met with ISADORE WEISBERG in defendant NARDELLO's office in Philadelphia, Pennsylvania.

3. On or about the 14th day of May, 1965, SHERMAN CHADWICK KAMINSKY met with the aforesaid victim.

In violation of Title 18 United States Code, Section 371 and Section 2.

A TRUE BILL:

(s)
Foreman

(s)
DREW J. T. O'KEEFE
United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA DIVISION

No. 22709, 22717, 22718

UNITED STATES OF AMERICA

vs.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

MOTION TO DISMISS INDICTMENT

The defendant, Joseph Francis Nardello, by his attorney A. Charles Peruto, Esquire, moves that the above indictments be dismissed on the following grounds:

1. The indictments do not state facts sufficient to constitute an offense against the United States.

(s) A. Charles Peruto
A. CHARLES PERUTO, ESQUIRE
202-04 North Broad Street
Philadelphia, Pa. 19102

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA DIVISION

No. 22709, 22718

UNITED STATES OF AMERICA

vs.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

MOTION TO DISMISS INDICTMENT

The defendant, Isadore Weisberg, by his attorney F. Emmett Fitzpatrick, Jr., Esquire, moves that the above indictments be dismissed on the following grounds:

1. The indictments do not state facts sufficient to constitute an offense against the United States.

(s) F. Emmett Fitzpatrick, Jr.
F. EMMETT FITZPATRICK, JR., ESQ.
12 South 12th Street
Room 1505
Philadelphia, Pa. 19107

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal Nos. 22709,
22717,
22718

UNITED STATES OF AMERICA

v.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY,
JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

OPINION

WEINER, J. JANUARY 2, 1968

Defendants herein were indicted and charged for the federal offenses of promoting and conspiring to promote extortion under state law, 18 U.S.C. §§ 1952, 371, and 2. Defendants subjected themselves to federal jurisdiction by their interstate travel for the purpose of carrying on their alleged enterprise, 18 U.S.C. § 1952(a).

The validity of this indictment raises squarely a question of statutory construction.

Defendants were allegedly involved in an interstate ring specializing in the "shaking down" of certain prominent victims whom members of the ring would entice into a compromising homosexual experience and then threaten with exposure unless a price were met. The indictments, which defendants here move to dismiss, were drawn under a statute which in terms prohibits interstate travel "in aid of racketeering enterprises," 18 U.S.C. § 1952(a). The statute further focuses, in pertinent part, on those who cross state lines with criminal intent and thereafter perform or attempt to perform:

> (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

18 U.S.C. § 1952(b) (2). Whether defendants' alleged activity is federally proscribed can be resolved only through analysis of the statutory language and legislative history.

The anti-racketeering statute, as it applies to the present defendants, defines the federal offense of extortion by reference to the standards of Pennsylvania law. Hence to understand fully the scope of the federal crime we must examine separately both the degree of particularity with which § 1952 incorporates the state law and the substantive meaning of the incorporated Pennsylvania crime of extortion.

Section 1952, as a result of legislative compromise, is disjunctively worded so as to cover several discontinous areas of crime. As the successive Congressional discussions show, the anti-racketeering bill, S. 1653, began with the language that was ultimately enacted into law and which proscribed, broadly, "extortion or bribery in violation of the laws of the State in which committed . . . ." 107 Cong. Rec. 13,942 (July 28, 1961). Ultimately rejected was an intermediate version which would have restricted the prohibited activity to extortion or bribery "in connection with" the crimes enumerated in the prior subsection of the statute, *viz.*, "gambling, liquor, narcotics, or prostitution offenses," Cong. Rec. 16,809 (August 23, 1961).

Lest this progression of draft versions be construed to evince a legislative intent to lend a broader reach to the final statute than its language would reasonably suggest, the House and Senate Hearings consistently show what the words of the statute themselves attest: that the incorporation of state definitions for the crimes of extortion and bribery was enacted with the expectation that their content would differ substantively from state to state.[1] The term "extortion" in 18 U.S.C. § 1952 was

[1] The Department of Justice, for example, testified before the House Committee that it anticipated that a gambler travelling from Nevada (where gambling is lawful) to Colorado (where it is not) would not come within the reach of § 1952; travel in the opposite direction, however, would bring him within the ambit of the statute. *Hearings on H.R. 6572 before Subcomm. No. 5 of the*

thus intended to track closely the legal understanding under state law, and was not designed to be more generic in scope.[8] As was said in a recent case under § 1952, "[r]eference to the state law is necessary . . . to identify the type of unlawful activity in which the accused was [or was not] engaged," *McIntosh* v. *United States*, No. 18,597 (8th Cir., November 13, 1967) at 5. The Pennsylvania definition of extortion, therefore, is strictly controlling in the instant case.

In Pennsylvania, the crime of extortion is committed, specifically, only by

> Whoever, being a public officer, wilfully and fraudulently receives or takes any reward or fee to execute and do his duty and office . . . .

18 P.S. § 4318. Since none of the defendants was a public officer (although two did pose as members of the Philadelphia Police Department), the state crimes with which they were charged are those of Blackmail by injury to reputation or business, 18 P.S. 4802; and Blackmail by accusation of heinous crime, 18 P.S. 4803. It is the Government's contention that these crimes fall within the scope of "extortion" as intended by 18 U.S.C. § 1952.

It is true that the terms "extortion" and "blackmail" are often confused in statutory, judicial, and common, language. The Pennsylvania crime of blackmail itself is defined as being committed, *inter alia*, by "[w]hoever by means of written, printed or oral communications . . . extorts money . . . ." 18 P.S. § 4801 (emphasis supplied).

What dicta there is in the Pennsylvania cases tending to equate the crimes of extortion and blackmail is sparse,

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House Comm. on the Judiciary, 87th Cong. 1st Sess. at 340-41 (May 1961). Indeed, earlier in a prepared statement before the Committee, the Department of Justice had described the aim of the bill as being "to bolster local law enforcement authorities . . . ." *Id.* at 336.

[8] *Cf.* the careful analysis of an analogous problem of statutory interpretation wherein Judge Higginbotham reaches the contrary conclusion as to the content lent by "federal usage" to the term "bribery" contained in § 504 of the Labor-Management Reporting Act, 29 U.S.C. § 504, in *Berman* v. *Teamsters Local 107*, 237 F. Supp. 767, 772-73 (E.D. Pa. 1964).

unsupported, and seems carelessly drawn. In *Commonwealth* v. *Kirk*, 141 Pa. Super. 128, *aff'd* 340 Pa. 346 (1940), it is said, at 136, that:

> . . . extortion is made a misdemeanor by Act of June 9, 1911, P.L. 833, 18 PS § 2932; *Com.* v. *Miller*, 94 Pa. Superior Ct. 499, 507, 508 [1928]; *Com.* v. *McHale*, 97 Pa. 407, 410 [1881].

The statute cited therein was the predecessor to the current blackmail statute, 18 P.S. § 4801. In *Kirk*, however, as well as in *Miller* and *McHale*, the defendant and/or his associate was a public officer. There is an inferential allusion to the interchangeability of blackmail and extortion in Pennsylvania, without any cited support, in *Commonwealth* v. *Downer*, 159 Pa. Super. 626, 632 (1946), and *Commonwealth* v. *Neubauer*, 142 Pa. Super. 528, 530 (1940). *Commonwealth* v. *Hoagland*, 93 Pa. Super. 274 (1928), seems more accurate, however, where it distinguishes the blackmail statute from common law extortion, by saying, at 276:

> The offense prohibited by that statute [P.L. 833] is not common law extortion. The statute makes the acts therein described misdemeanors whether committed under color of office or not.

And *Commonwealth* v. *Nathan*, 93 Pa. Super. 193 (1928) appears simply in error as to the statutory law, where it reports, at 197:

> In common understanding, blackmail and extortion describe the same conduct. While extortion at common law was an offense commited [sic] by an officer under color of his office, the term has a broader significance in modern legislation and applies to persons who exact money either for the performance of a duty, the prevention of injury, or the exercise of influence.

Contra, 18 P.S. § 4318.

In summary, then, to commit the crime of extortion in Pennsylvania, it is no less a prerequisite that the actor be a public officer because the verb "extort" has a more

generic meaning in common understanding. The crime of extortion which is "in violation of the laws of the State in which" defendants allegedly carried on their activity is committed in Pennsylvania only by "[w]hoever, being a public officer . . . takes any reward or fee . . . ." Defendants are not within this class of persons. That they do not come within the ambit of the federal statute, predicated as it is upon state criminal definitions, is compellingly clear.

Having been constrained to reach this conclusion, we find one further comment in order. Defendants' "shakedown" activities, as alleged in the federal indictments, are evidently obnoxious to society. They fall easily within the category of conduct that is wrong on its face, or *malum in se*; and it is only an anomaly of the law that they are not legally proscribed, or *mala prohibita*. This is the vice of the law as it is presently written; and not the virtue of the acts as allegedly performed.

Criticism of the awkward reach of 18 U.S.C. § 1952 was not lacking when that act was under consideration by Congress. One of the most telling comments as to the act's weakness in just such a case as the present one came from a letter by the eminent penologist and authority on federal jurisprudence, Professor Herbert Wechsler:

> I have examined the bills and find that, on the whole, they represent what I believe to be an uncritical and poorly defined extension of the Federal criminal law . . . . My point is . . . that I think it should be possible to define distinctive Federal offenses with clarity and precision, or alternatively, to limit Federal action to the creation of a Federal jurisdiction which, when exercised by instituting a prosecution, would be preemptive of State prosecution for the same crime.

Hearings on H.R. 6572 before Subcomm. No. 5 of the House Comm. on the Judiciary, 87th Cong. 1st Sess. at 75 (May 1961). An evident source easily available for a federal definition of extortion in § 1952 would have been 18 U.S.C. § 1951(b) (2), where the earlier companion

statute laid out the meaning of extortion for the purpose of that section:

> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Section 1952 seems inadequately drawn for the purposes of covering criminal activity other than the "gambling, liquor, narcotics, or prostitution" with which the enacting Congress was really concerned at the time and which have been given federally enacted content. As a result of this flaw in conception and draftsmanship, § 1952 does not include extortionary activity such as alleged herein which is committed in those states, such as Pennsylvania, where extortion is defined with reference only to public officials.

ORDER

AND NOW, January 2, 1968, defendants' motion to dismiss the indictments herein is hereby GRANTED.

IT IS SO ORDERED.

(s) Charles R. Weiner
J.

Filed, Jan. 4, 1968, John J. Harding, Clerk,
By J. Dpty. Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal Nos. 22709
22717
22718

UNITED STATES OF AMERICA, APPELLANT

v.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG, APPELLEE

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that the United States of America, the appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the District Court for the Eastern District of Pennsylvania dismissing the indictment rendered against the above named defendants on January 2, 1968.

This appeal is taken pursuant to Title 18 United States Code, Section 3781.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Indictment

(b) All Motions, Briefs and other documents filed of record.

(c) Opinion of the Court dated January 2, 1968.

III. The following questions are presented by the appeal:

(a) Whether the phrase "unlawful activity" as defined in Title 18, United States Code, Section 1952 ap-

plies to the crime of blackmail as defined in the Pennsylvania Penal Code.

(s)

DREW J. T. O'KEEFE
United States Attorney

(s)

ROBERT ST.LEGER GOGGIN
Assistant United States Attorney

Filed January 30, 1968

SUPREME COURT OF THE UNITED STATES

No. 1277, October Term, 1967

UNITED STATES, APPELLANT

v.

JOSEPH FRANCIS NARDELLO and ISADORE WEISBERG

APPEAL from the United States District Court for the Eastern District of Pennsylvania.

ORDER NOTING PROBABLE JURISDICTION—June 17, 1968

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 313379 31

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No.

UNITED STATES OF AMERICA, APPELLANT

v.

JOSEPH FRANCIS NARDELLO and ISADORE WEISBERG

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania (Appendix A, *infra*, pp. 12-18) is not yet reported.

JURISDICTION

On January 2, 1968, the district court entered an order dismissing indictments against appellees on the ground that the criminal statute in question (18 U.S.C. 1952) does not encompass the type of activity

in which defendants were alleged to have engaged. Notice of appeal to this Court was filed with the district court on January 30, 1968.

Section 3731 of the Criminal Code confers on this Court jurisdiction to review, on direct appeal, a judgment dismissing an indictment, when that dismissal is based on the construction of the statute on which the indictment is founded. *United States* v. *Fabrizio*, 385 U.S. 263, 266.

QUESTION PRESENTED

Whether 18 U.S.C. 1952, making it a federal crime to travel in or use the facilities of interstate commerce to promote "extortion" in violation of state law, covers extortionate conduct which is captioned "blackmail" rather than "extortion" in the state penal code.

STATUTE INVOLVED

18 U.S.C. 1952 provides:

> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or
>
> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraph (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

Sections 4802, 4803 and 4318 of the Pennsylvania Penal Code are set forth in Appendix B, *infra*, pp. 19-20.

STATEMENT

The instant prosecutions arose from the government's efforts to deal with an interstate ring which extorts money from victims on threat of exposure to charges of homosexuality. The three indictments immediately involved were returned against various participants in the ring by a federal grand jury in the Eastern District of Pennsylvania. They charged substantive violations of 18 U.S.C. 1952, and conspiracies to violate that section, by travelling in interstate commerce from Chicago, Illinois, and from New Jersey to Philadelphia, Pennsylvania, with intent to promote, and thereafter promoting, an unlawful activity: specifically, blackmail by injury to reputation and business, and blackmail by accusation of a heinous crime, in violation of Sections 4802 and 4803 of the

Pennsylvania Penal Code (reprinted *infra*, App. B. 19-20).

As the district court noted in its opinion dismissing the indictments, the defendants "were allegedly involved in an interstate ring specializing in the 'shaking down' of certain prominent victims whom members of the ring would entice into a compromising homosexual experience and then threaten with exposure unless a price were met" (App. A. 12). The nature of the scheme further appears from the allegations in the conspiracy counts (see, *e.g.*, Count II of Indictment No. 22709): some of the defendants represented to the victim that they were detectives of the Philadelphia Police Department and had warrants for the victim's immediate arrest.

On motion of the appellees,[1] the district court dismissed the three indictments. The court ruled that "extortion," as used in Section 1952, includes only acts in violation of the section of the Pennsylvania Penal Code specifically so entitled (18 Pa. Stat. 4318) (App. B. 19). Since that section applies only to the

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[1] Although the opinion below is entitled *United States* v. *Burke, Kaminsky, Nardello,* and *Weisberg* (App. A. 12), only Nardello and Weisberg moved to dismiss the indictments, and since the indictments stand dismissed as to them only they are the only appellees here. The title to the district court's opinion is based on the fact that the lead indictment (No. 22709) named the above-mentioned four defendants. Appellee Nardello was also charged in indictment No. 22717, and both he and appellee Weisberg were named in No. 22718. Neither Burke nor Kaminsky (a fugitive), nor any other defendant charged in the latter two indictments, joined in the successful motions to dismiss.

conduct of persons holding public office, and since appellees were not alleged to be public officers, the court held that the indictments failed to charge an offense under the federal statute. Acts of private persons in obtaining money through threat of injury or accusation are made criminal by Pennsylvania law, but they are formally termed "blackmail." Appellees had been charged with promoting schemes in violation of these state statutes, 18 Pa. Stat. 4802 and 4803, which are entitled "Blackmail by injury to reputation or business" and "Blackmail by accusation of heinous crime" respectively. (See App. B. 19-20.) The district court, however, construed the federal anti-racketeering law as evincing a congressional intention that the term "extortion" as used in Section 1952 should "track closely the legal understanding under state law" and "was not designed to be more generic in scope" (App. A. 14). The court concluded that Pennsylvania does not consider the conduct here alleged a form of "extortion," and accordingly dismissed the indictments.

THE QUESTION IS SUBSTANTIAL

1. The district court's construction of an important anti-racketeering statute drastically restricts the operation of federal legislation in this field. The recent addition of Section 1952 to the federal Criminal Code was designed to bolster local law enforcement by denying the facilities of interstate commerce to those engaged in certain types of unlawful activity found to be the principal occupations of persons in-

volved in organized crime.[3] While the statute is addressed, *inter alia*, to "extortion * * * in violation of the laws of the State in which committed," neither the language of the section nor its legislative history warrants limiting its reach only to those states in which the obtaining of money or property by threats is formally denominated extortion. Such a strained construction would mean that Congress rendered this measure inapplicable to extortionate activities in the more than one-third of the fifty states (see Appendix C, *infra*, p. 21) where this type of conduct is outlawed, but under a different name.[5] This question of congressional purpose becomes especially significant in light of the fact that the use of force and threats is the key to so-called "loan shark" operations which provide organized crime with its second largest source of revenue.[4]

Undeniably, Congress rested the applicability of Section 1952 on a finding that the particular activity sought to be carried on is unlawful under the laws of the state in which the conduct occurs. From this premise the district court drew the conclusion that application of the federal sanction depends on whether the state penal code has used labels conforming to

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[3] Hearings on S. 1653 Before the Senate Committee on the Judiciary, 87th Cong., 1st Sess. 17 (1961).

[5] We note that Section 223.4 of the Model Penal Code (Prop. Off. Draft 1962) would categorize the type of conduct here alleged as a form of "Theft": "Theft by Extortion."

[4] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 189 (1967).

the terminology of the federal statute. Congress, however, was concerned with general categories of crime, and not preoccupied with captions. Thus, if the conduct alleged is within the generic meaning of "extortion," *and* if it is activity prohibited by state law, it should, we believe, make no difference whether the state lists the crime under the heading "blackmail" or some other term.

In referring to congressional awareness that the content of laws governing "gambling" would vary substantively from state to state, and inferring that the same understanding must apply to use of the term "extortion" (App. A. 14), the district court misapprehended the purpose and effect of making state norms controlling. The objective of assisting state law enforcement efforts is reflected in the withholding of federal penalties for conduct which is not an offense at all under state law. But this scarcely means —to use the district court's example—that whether Section 1952 applies to promotion of illegal "gambling" turns on the caption identifying anti-gambling provisions in the state code. Respect for a state's decision to allow certain forms of gambling to take place lawfully does not fairly imply that the federal statute fails to reach the forms of gambling made illegal, albeit under a different name. By reading into the section the peculiar variations of state terminology, the district court has decided an important question of federal law in a way which makes form control over substance and frustrates Congress' purpose.[5]

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[5] Thus, in states like Pennsylvania, the district court's reading of Section 1952 would render that statute practically

The only federal decision relied on by the court below to support its conclusion actually undermines the district court's contrary position. In *McIntosh* v. *United States*, 385 F. 2d 274 (C.A. 8), defendants were charged with violating 18 U.S.C. 1952 by using interstate telephone facilities to promote extortion in violation of Section 560.130 of the Annotated Missouri Statutes, which is entitled "Robbery in the third degree." The acts prohibited are similar to those covered by the Pennsylvania blackmail statutes, 18 Pa. Stat. 4801-4806. The precise holding of the court of appeals was that the government was not required to prove that the defendants actually received the proceeds of the extortion (an essential element of the state offense). In so holding, the court expressly adopted the government's position that "[r]eference to the state law is necessary only to identify the type of unlawful activity in which the accused was engaged." 385 F.2d at 276.[6] Implicit in the decision is the conclusion that the indictment properly charged a federal offense.

2. It is undeniable that the conduct charged to appellees is made unlawful by the Pennsylvania blackmail statutes, 18 Pa. Stat. 4802 and 4803. It also seems clear, though in our view it is not essential, that even in Pennsylvania such conduct is considered "extortion." While the origin of the offense of "ex-

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meaningless, since if only public officers of the state can commit "extortion" it is highly unlikely that such "extortionists" would be using interstate facilities.

[6] The district court materially altered the meaning of this quotation by deleting the word "only." See App. A. 14.

tortion" lay in the exaction of illegal fees by public officers—as the captions in the Pennsylvania and other state codes illustrate—the term now has a broader, established meaning. Indeed, Section 4803 of the Pennsylvania Criminal Code, alleged by the instant indictments to have been violated, reads (18 Pa. Stat. 4803):[7]

> Whoever accuses any person of any heinous crime * * * with a view and intent to *extort* or gain money from such person * * * any money or property, is guilty of a felony * * *. [Emphasis supplied.]

In circumstances similar to those present in this case, the Pennsylvania Superior Court recognized the essential identity of extortion and blackmail when it upheld a conviction for violation of 18 Pa. Stat. 4803 under an indictment which charged "extortion by accusation of heinous crime." *Commonwealth* v. *Downer*, 159 Pa. Super. 626, 632, 49 A. 2d 516 (1946).[8]

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[7] The other Pennsylvania "blackmail" statutes, 18 Pa. Stat. 4801, 4802 (the latter also alleged in the indictments to have been violated) also use the term "extorts" in the operative definitions of proscribed conduct. These are the equivalent of the modern statutes labeled extortion in other states.

It is interesting to note that the movement toward the modern extortion statutes, in effect in the majority of the states, developed in the context of threats to accuse the victim of sodomy. Perkins, *Criminal Law*, 324-327 (1957); Michael and Wechsler, *Criminal Law and Its Administration*, 384-386 (1940).

[8] See, also, *Commonwealth* v. *Bernstine*, 103 Pa. Super. 518, 157 Atl. 698 (1931), affirmed, 308 Pa. 394, 162 Atl. 297 (1932); *Commonwealth* v. *Burdell*, 380 Pa. 43, 48, 110 A. 2d 193 (1955) (dictum).

3. It was the interstate mobility of participants in organized criminal activity that was of primary concern to the Congress.[9] Indeed, this case confirms the congressional judgment that federal anti-racketeering legislation was necessary to supplement state and local law enforcement. The typical city police force faces an almost impossible task in attempting to uncover and prosecute a criminal venture mounted by persons who arrive in the jurisdiction shortly before its completion and quickly slip back across a state border to obtain sanctuary. As the President's Commission on Law Enforcement and Administration of Justice recently explained,[10]

> No State or local law enforcement agency is adequately staffed to deal successfully with the problems of breaking down criminal organizations * * *. Local police are hampered by their limited geographical jurisdiction, and law enforcement has not responded by developing sufficient coordination among the agencies.

In these cases, the indictments allege that the appellees traveled from Illinois and from New Jersey to promote or execute acts of extortion in Pennsylvania. These activities, however captioned, were illegal under the laws of Pennsylvania.

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[9] Hearings on S. 1653, *supra*, at 17.

[10] *The Challenge of Crime in a Free Society*, *supra*, at 199.

CONCLUSION

For the foregoing reasons, we respectfully submit that this Court should note probable jurisdiction and reverse the judgment of the district court.

ERWIN N. GRISWOLD,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

PHILIP A. LACOVARA,
Assistant to the Solicitor General.

BEATRICE ROSENBERG,
PHILIP WILENS,
CHARLES RUFF,
Attorneys.

MARCH 1968.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal Nos. 22709, 22717, 22718

UNITED STATES OF AMERICA

v.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

OPINION

WEINER, J. January 2, 1968

Defendants herein were indicted and charged for the federal offenses of promoting and conspiring to promote extortion under state law, 18 U.S.C. §§ 1952, 371, and 2. Defendants subjected themselves to federal jurisdiction by their interstate travel for the purpose of carrying on their alleged enterprise, 18 U.S.C. § 1952(a).

The validity of this indictment raises squarely a question of statutory construction.

Defendants were allegedly involved in an interstate ring specializing in the "shaking down" of certain prominent victims whom members of the ring would entice into a compromising homosexual experience and then threaten with exposure unless a price were met. The indictments, which defendants here move to dismiss, were drawn under a statute which in terms prohibits interstate travel "in aid of racketeering enterprises," 18 U.S.C. § 1952(a). The statute further focuses, in pertinent part, on those who cross

state lines with criminal intent and thereafter perform or attempt to perform:

> (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

18 U.S.C. § 1952(b) (2). Whether defendants' alleged activity is federally proscribed can be resolved only through analysis of the statutory language and legislative history.

The anti-racketeering statute, as it applies to the present defendants, defines the federal offense of extortion by reference to the standards of Pennsylvania law. Hence to understand fully the scope of the federal crime we must examine separately both the degree of particularity with which § 1952 incorporates the state law and the substantive meaning of the incorporated Pennsylvania crime of extortion.

Section 1952, as a result of legislative compromise, is disjunctively worded so as to cover several discontinous areas of crime. As the successive Congressional discussions show, the anti-racketeering bill, S. 1653, began with the language that was ultimately enacted into law and which proscribed, broadly, "extortion or bribery in violation of the laws of the State in which committed . . . ." 107 Cong. Rec. 13,942 (July 28, 1961). Ultimately rejected was an intermediate version which would have restricted the prohibited activity to extortion or bribery "in connection with" the crimes enumerated in the prior subsection of the statute, *viz.*, "gambling, liquor, narcotics, or prostitution offenses," Cong. Rec. 16,809 (August 23, 1961).

Lest this progression of draft versions be construed to evince a legislative intent to lend a broader reach to the final statute than its language would reason-

ably suggest, the House and Senate Hearings consistently show what the words of the statute themselves attest: that the incorporation of state definitions for the crimes of extortion and bribery was enacted with the expectation that their content would differ substantively from state to state.[1] The term "extortion" in 18 U.S.C. § 1952 was thus intended to track closely the legal understanding under state law, and was not designed to be more generic in scope.[2] As was said in a recent case under § 1952, "[r]eference to the state law is necessary . . . to identify the type of unlawful activity in which the accused was [or was not] engaged," *McIntosh* v. *United States*, No. 18, 597 (8th Cir., November 13, 1967) at 5. The Pennsylvania definition of extortion, therefore, is strictly controlling in the instant case.

In Pennsylvania, the crime of extortion is committed, specifically, only by

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[1] The Department of Justice, for example, testified before the House Committee that it anticipated that a gambler travelling from Nevada (where gambling is lawful) to Colorado (where it is not) would not come within the reach of § 1952; travel in the opposite direction, however, would bring him within the ambit of the statute. *Hearings on H.R. 6572 before Subcomm. No. 5 of the House Comm. on the Judiciary*, 87th Cong. 1st Sess. at 340-41 (May 1961). Indeed, earlier in a prepared statement before the Committee, the Department of Justice had described the aim of the bill as being "to bolster local law enforcement authorities . . . ." *Id.* at 336.

[2] *Cf.* the careful analysis of an analogous problem of statutory interpretation wherein Judge Higginbotham reaches the contrary conclusion as to the content lent by "federal usage" to the term "larceny" contained in § 504 of the Labor-Management Reporting Act, 29 U.S.C. § 504, in *Berman* v. *Teamsters Local 107*, 237 F. Supp. 767, 772-73 (E.D. Pa. 1964).

> Whoever, being a public officer, wilfully and fraudulently receives or takes any reward or fee to execute and do his duty and office . . . .

18 P.S. § 4318. Since none of the defendants was a public officer (although two did pose as members of the Philadelphia Police Department), the state crimes with which they were charged are those of Blackmail by injury to reputation or business, 18 P.S. 4802; and Blackmail by accusation of heinous crime, 18 P.S. 4803. It is the Government's contention that these crimes fall within the scope of "extortion" as intended by 18 U.S.C. § 1952.

It is true that the terms "extortion" and "blackmail" are often confused in statutory, judicial, and common, language. The Pennsylvania crime of blackmail itself is defined as being committed, *inter alia*, by "[w]hoever by means of written, printed or oral communications . . . extorts money . . . ." 18 P.S. § 4801 (emphasis supplied).

What dicta there is in the Pennsylvania cases tending to equate the crimes of extortion and blackmail is sparse, unsupported, and seems carelessly drawn. In *Commonwealth* v. *Kirk*, 141 Pa. Super. 123, *aff'd* 340 Pa. 346 (1940), it is said, at 136, that:

> . . . extortion is made a misdemeanor by Act of June 9, 1911, P.L. 833, 18 PS § 2932; *Com.* v. *Miller*, 94 Pa. Superior Ct. 499, 507, 508 [1928]; *Com.* v. *McHale*, 97 Pa. 407, 410 [1881].

The statute cited therein was the predecessor to the current blackmail statute, 18 P.S. § 4801. In *Kirk*, however, as well as in *Miller* and *McHale*, the defendant and/or his associate was a public officer. There is an inferential allusion to the interchangeability of blackmail and extortion in Pennsylvania, without any cited support, in *Commonwealth* v. *Downer*, 159 Pa.

Super. 626, 632 (1946); and *Commonwealth* v. *Neubauer*, 142 Pa. Super. 528, 530 (1940). *Commonwealth* v. *Hoagland*, 93 Pa. Super. 274 (1928), seems more accurate, however, where it distinguishes the blackmail statute from common law extortion, by saying, at 276:

> The offense prohibited by that statute [P.L. 833] is not common law extortion. The statute makes the acts therein described misdemeanors whether committed under color of office or not.

And *Commonwealth* v. *Nathan*, 93 Pa. Super. 193 (1928) appears simply in error as to the statutory law, where it reports, at 197:

> In common understanding, blackmail and extortion describe the same conduct. While extortion at common law was an offense commited [sic] by an officer under color of his office, the term has a broader significance in modern legislation and applies to persons who exact money either for the performance of a duty, the prevention of injury, or the exercise of influence.

Contra, 18 P.S. § 4318.

In summary, then, to commit the crime of extortion in Pennsylvania, it is no less a prerequisite that the actor be a public officer because the verb "extort" has a more generic meaning in common understanding. The crime of extortion which is "in violation of the laws of the State in which" defendants allegedly carried on their activity is committed in Pennsylvania only by "[w]hoever, being a public officer . . . takes any reward or fee . . . ." Defendants are not within this class of persons. That they do not come within the ambit of the federal statute, predicated as it is upon state criminal definitions, is compellingly clear.

Having been constrained to reach this conclusion, we find one further comment in order. Defendants' "shakedown" activities, as alleged in the federal indictments, are evidently obnoxious to society. They fall easily within the category of conduct that is wrong on its face, or *malum in se;* and it is only an anomaly of the law that they are not legally proscribed, or *mala prohibita.* This is the vice of the law as it is presently written; and not the virtue of the acts as allegedly performed.

Criticism of the awkward reach of 18 U.S.C. § 1952 was not lacking when that act was under consideration by Congress. One of the most telling comments as to the act's weakness in just such a case as the present one came from a letter by the eminent penologist and authority on federal jurisprudence, Professor Herbert Wechsler:

> I have examined the bills and find that, on the whole, they represent what I believe to be an uncritical and poorly defined extension of the Federal criminal law . . . . My point is . . . that I think it should be possible to define distinctive Federal offenses with clarity and prescision, or alternatively, to limit Federal action to the creation of a Federal jurisdiction which, when exercised by instituting a prosecution, would be preemptive of State prosecution for the same crime.

Hearings on H.R. 6572 before Subcomm. No. 5 of the House Comm. on the Judiciary, 87th Cong. 1st Sess. at 75 (May 1961). An evident source easily available for a federal definition of extortion in § 1952 would have been 18 U.S.C. § 1951(b) (2), where the earlier companion statute laid out the meaning of extortion for the purpose of that section:

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Section 1952 seems inadequately drawn for the purposes of covering criminal activity other than the "gambling, liquor, narcotics, or prostitution" with which the enacting Congress was really concerned at the time and which have been given federally enacted content. As a result of this flaw in conception and draftsmanship, § 1952 does not include extortionary activity such as alleged herein which is committed in those states, such as Pennsylvania, where extortion is defined with reference only to public officials.

ORDER

AND NOW, January 2, 1968, defendants' motion to dismiss the indictments herein is hereby GRANTED.

IT IS SO ORDERED.

/s/ Charles R. Weiner
J.

Filed Jan. 4, 1968

APPENDIX B

Title 18, § 4318 of the Pennsylvania statutes provides:

§ 4318. Extortion

Whoever, being a public officer, wilfully and fraudulently receives or takes any reward or fee to execute and do his duty and office, except such as is or shall be allowed by some act of Assembly, or receives or takes, by color of his office, any fee or reward whatever, not, or more than is, allowed by law, is guilty of extortion, a misdemeanor, and on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars ($500), or to undergo imprisonment not exceeding one (1) year, or both. 1939, June 24, P.L. 872, § 318.

Title 18, § 4802 of the Pennsylvania statutes provides:

§ 4802. Blackmail by injury to reputation or business

Whoever, with intent to intimidate, annoy or levy blackmail, or extort money, property or other valuable thing from any person, by means of threats, charges or accusations by written, printed, or oral communications, injures the person, property, reputation or business of any person, is guilty of a misdemeanor, and on conviction, shall be sentenced to imprisonment, by separate or solitary confinement at labor or by simple imprisonment, not exceeding three (3) years, or to pay a fine not exceeding two thousand dollars ($2,000), or both. 1939, June 24, P.L. 872, § 802.

Title 18, § 4803 of the Pennsylvania statutes provides:

§ 4803. Blackmail by accusation of heinous crime

Whoever accuses any person of any heinous crime, or of any assault with intent to commit such heinous crime, or any attempt to endeavor to commit the same, or of making or offering any solicitations, persuasion, promise or threat to any person, whereby to move or induce such person to commit, or permit such heinous crime, with a view and intent to extort or gain from such person, or by intimidating such person by such accusation or threat, extorts or gains from such person any money or property, is guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five thousand dollars ($5,000), or to undergo imprisonment, by separate or solitary confinement at labor, not exceeding ten (10) years, or both. 1939, June 24, P.L. 872, § 803.

APPENDIX C

The following jurisdictions make it an offense to obtain money or property by threatening to accuse the victim of crime or otherwise to injure his reputation but do not label that offense "extortion."

Blackmail statutes:

Alabama—Code of Alabama, Title 14, §§ 49, 50
Alaska—Statutes 1962, § 11.15.300
Arkansas—Statutes 1947, § 41-4002
Colorado—Revised Statutes, § 40-12-1
Connecticut—General Statutes (1958), § 53-40
District of Columbia—D.C. Code, § 22-2305
Georgia—Ga. Code, § 26-1801
Indiana—Burns' Annotated Statutes (1956), § 10-3204
Kentucky—Revised Statutes (1963), § 435.270
Nebraska—Revised Statutes (1943), §§ 28-441 *et seq.*
New Hampshire—Revised Statutes (1955), § 572:46
North Carolina—General Statutes, § 14-118
Ohio—Revised Code 1953, § 2901.38
South Carolina—Code of Laws 1962, § 16-566.1
Wyoming—Statutes (1957), § 6-147

Robbery Statutes:

Kansas—Kansas Statutes, § 21-529
Missouri—Vernon's Annotated Statutes, § 560.130

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In the Supreme Court of the United States

October Term, 1968
No. 51

UNITED STATES OF AMERICA,
Appellant

vs.

JOSEPH FRANCIS NARDELLO and
ISADORE WEISBERG

On Appeal from the United States District Court for the Eastern District of Pennsylvania.

MOTION TO DISMISS OR AFFIRM

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No. 1277

United States of America,

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v.

Joseph Francis Nardello and Isadore Weisberg

On Appeal From the United States District Court for the Eastern District of Pennsylvania

MOTION TO DISMISS OR AFFIRM

Appellees move the Court to dismiss the appeal herein on the grounds hereinafter set forth, or to affirm the judgment sought to be reviewed on the appeal on the ground that it is manifest that the questions on which the decisions of this cause depends are so unsubstantial as not to need further argument.

1. Pennsylvania, by statute, makes a clear distinction between extortion and blackmail.

Under the common law, extortion is defined as the unlawful taking by any officer, of any money or thing of

value that is not due to him, or the taking of more than is due, or the taking of money before it is due. 31 *Am. Jur.* 2d 900. The statutes which now chiefly govern this crime in the various jurisdictions are substantially declaratory of this common-law definition.

Pennsylvania has, by statute, adopted a definition of extortion which is in accord with the common-law concept of extortion.

18 P.S. 4318. Pennsylvania has also adopted statutes which prohibit the crime of blackmail, 18 P.S. 4802 and 4803. A careful reading of these sections shows that Pennsylvania has adopted the common-law distinction of these crimes.

It is true that the crime of extortion may be committed by a private individual in jurisdictions where the common-law definition of the offense has been enlarged by statute to include what is termed "blackmail." Pennsylvania, however, has maintained the common-law distinction between these crimes. It is an accepted rule of construction that any statute which is in derogation of the common-law should be strictly construed; this is particularly true of criminal statutes.

Defendants were indicted and charged with violations of 18 U.S.C. §1952. Sec. 1952 specifically refers to state law as defining the offense of "extortion." Under the law of Pennsylvania, the defendants could never have been convicted of extortion. Nor could they have been convicted of any other offense enumerated in the section.

The Government seems to contend that this distinction is a mere technicality. That this is not so can be seen

by the vast difference between the penalties for the two crimes.

Wherefore, appellees pray the Court to dismiss the appeal herein, or to affirm the judgment sought to be reviewed.

F. EMMETT FITZPATRICK, JR.,
A. CHARLES PERUTO,
Attorneys for Appellees.

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 51

UNITED STATES OF AMERICA, APPELLANT

v.

JOSEPH FRANCIS NARDELLO AND ISADORE WEISBERG

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court dismissing the indictment (A. 20–25) is reported at 278 F. Supp. 711.

JURISDICTION

The order of the district court was entered on January 2, 1968 (A. 25). The notice of appeal was filed on January 30, 1968 (A. 26–27). This Court noted probable jurisdiction on June 17, 1968 (A. 28). The jurisdiction of this Court rests on 18 U.S.C. 3731.

QUESTION PRESENTED

Whether 18 U.S.C. 1952, making it a federal crime to travel in or use the facilities of interstate commerce

to promote "extortion" in violation of state (or federal) law, applies to extortionate conduct which is captioned "blackmail" rather than "extortion" in a state penal code.

STATUTE INVOLVED

18 U.S.C. 1952 provides:

> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or
>
> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified in subparagraph (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
>
> (b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

Sections 4802, 4803 and 4318 of the Pennsylvania Penal Code are set forth in Appendix A, *infra*, pp. 27-28.

STATEMENT

On November 30, 1966, several indictments were returned in the United States District Court for the Eastern District of Pennsylvania, charging appellees and others with the federal offenses of traveling interstate and conspiring to travel interstate in order to promote extortion under state law, in violation of 18 U.S.C. 1952 and 371.[1] The indictments alleged that the defendants traveled in interstate commerce (from Chicago to Philadelphia in two of the indictments and from New Jersey to Philadelphia in the third indictment) to promote an unlawful activity, blackmail by injury to reputation and business in violation of Section 4802 of the Pennsylvania Penal Code and blackmail by accusation of a heinous crime in violation of Section 4803 of the Pennsylvania Penal Code. As the scheme was more fully detailed in the conspiracy counts, one of the defendants would lure the intended victim into a "compromising position" (A. 13), and later other defendants would represent to him that they were police officers who either had a warrant for his arrest or had other authority for his immediate arrest (A. 10, 12, 16). One of the overt acts alleged is that the defendants actually obtained $5,000 from a victim (A. 11).

On motions of the appellees (A. 18–19), the district court dismissed the indictments.[2] The court ruled that

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[1] Appellee Nardello was named in three indictments (A. 9–17) and appellee Weisberg in two (A. 9–11, 15–17).

[2] The other defendants, including one defendant who is a fugitive (Kaminsky), did not join in the successful motions to dismiss. The indictments were dismissed only as to appellees (A. 2, 6, 8).

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the term "extortion" in violation of state law, as used in Section 1952 of the federal Criminal Code, the so-called "Travel Act", was intended to "track closely the legal understanding [of the word] under state law, and was not designed to be more generic in scope" (A. 22). From this premise the court concluded that prosecution under the federal statute is confined to instances where a defendant has traveled into Pennsylvania with the intent to violate the section of the Pennsylvania Penal Code specifically denominated "Extortion." In Pennsylvania, the statute entitled extortion is applicable only to the conduct of persons holding public office (18 Pa. Stat. 4318, *infra*, App. A, p. 27). Acts of private persons in obtaining money through threats are captioned "blackmail" under Pennsylvania law (18 Pa. Stat. 4801, 4802, 4803, *infra*, App. A, pp. 27–28). Rejecting the analysis of various state courts (A. 22–23), the court below concluded that Pennsylvania does not consider the conduct here involved as "extortion", and held, accordingly, that the indictments failed to charge extortion under state law within the meaning of 18 U.S.C. 1952.

SUMMARY OF ARGUMENT

I

When it enacted the Travel Act (18 U.S.C. 1952) in 1961, Congress regarded it as a major federal effort to combat organized crime by closing the channels of interstate commerce to persons who engage in certain unlawful activities in which the syndicates had been shown to specialize. In making it a federal crime to enter a state with the intention to carry on "extor-

tion" in violation of the laws of that state, Congress was using that term to describe a category of coercive exactions, and not as confined to the ancient common law concept of a public officer's acceptance of unauthorized fees. The statutory phrasing must either be accepted in its ordinary, conventional, and generic sense, or else the varieties in terminology in modern penal codes will strip the statute of applicability in approximately one-third of the states where extortionate activities are made punishable under titles other than "extortion".

Section 1952 refers to state law because of the congressional purpose of supplementing enforcement of state laws which the mobile modern criminal was able to violate with practical impunity by slipping back and forth across state boundaries. Neither the language of the statute nor its purpose supports a reading that activities which are not classified as "extortion" *eo nomine* in the state code are not embraced within the congressional ban, although they are extortionate and are in fact punishable under state law, but under a different name. In light of the federal interest in undermining the power of national crime syndicates, it is reasonable to construe the term "extortion" in Section 1952 as having the independent significance of referring in a comprehensive, generic sense to any state laws which proscribe the kind of activity which concerned Congress.

II

Should the Court decide that "extortion" was not used generically, it should be construed as at least

including "blackmail", which has long been regarded as its synonym. Pennsylvania as well as a number of other states have followed the natural usage of treating "extortion" and "blackmail" as interchangeable concepts, and their statutes and judicial decisions have done so. This alternative construction would at least preserve the applicability of the statute in those states which outlaw the conduct alleged in this case as "blackmail."

ARGUMENT

I

CONGRESS USED THE TERM "EXTORTION" IN ITS GENERIC SENSE, AS CONNOTING A TYPE OF ACTIVITY WHICH, IF ACTUALLY PROSCRIBED BY STATE LAW, MAY NOT BE CARRIED ON BY RESORT TO INTERSTATE COMMERCE

The Travel Act, 18 U.S.C. 1952, bans anyone from interstate travel to further unlawful activities, including extortion "in violation of the laws of the State" where the act is committed. The issue in this case arises from the fact that Congress did not undertake in the statute to define "extortion".

At common law the term "extortion" designated the crime committed by a public officer who under color of his office took money or property to which neither he nor his office was entitled. 3 Wharton, *Criminal Law and Procedure* (Anderson ed.) §§ 1392–1395, pp. 789–793; *United States* v. *Laudani* 134 F. 2d 847, 851, n. 1 (C.A. 3), reversed on other grounds, 320 U.S. 543.[1] Over the centuries and

[1] There are, however, some indications that extortion by a non-official was also a common law misdemeanor. Winder, *The Development of Blackmail*, 5 Modern L. Rev. 21, 30; 2 Russell, *On Crime* (12th ed.) 867.

sparked by statutory replacement of common law crimes, the concept of "extortion" has been expanded to include any obtaining of money or thing of value from another with his consent induced by the wrongful use of force, fear, or threats. This is the generally accepted modern meaning of the term.[4] Indeed, in the Hobbs Act, 18 U.S.C. 1951(b)(2)—the antiracketeering legislation which has been described as the extortion statute "best known to federal legislators" (*Postma* v. *International Brotherhood of Teamsters*, 337 F. 2d 609 (C.A. 2))—Congress had defined "extortion" in accordance with contemporary understanding.

In some jurisdictions like Pennsylvania, however, such wrongful conduct when committed by a private person is described, not as "extortion", but as "blackmail". 3 Wharton, *Criminal Law and Procedure* (Anderson ed.) § 1396, p. 794. And in other codes, this same type of conduct is made criminal under other labels such as theft, coercion, or robbery. (See App. B, *infra*, pp. 29–30). The question at issue here is whether Congress used the term "extortion" in Section 1952 to comprehend all activities which are extortionate in the commonly accepted sense of the word and which are

[4] See, *e.g.*, 3 Wharton, *Criminal Law and Procedure* (Anderson Ed.) §§ 1396–1399, pp. 793–797; Note, *A Rationale of the Law of Aggravated Theft*, 54 Colum. L. Rev. 84; *United States* v. *Dunkley*, 235 Fed. 1000 (N.D. Calif.); see also, A.L.I., *Model Penal Code*, Section 223.4, *Theft by Extortion* (Proposed Official Draft, 1962); A.L.I., *Model Penal Code*, Section 206.3, *Theft by Intimidation* (Tent. Draft No. 2, 1954); *Rutkin* v. *United States*, 343 U.S. 130; *People* v. *Burt*, 45 Cal. 2d 311, 288 P. 2d 503.

also unlawful in the state where committed, irrespective of the label affixed in the state penal code. We dispute the district court's view that, since the statute speaks of "extortion * * * in violation of the laws of the State in which committed", the state terminology must govern—so that Section 1952 applies only to activities specifically labelled extortion under state law. Neither the language of the statute nor its purpose justifies the reading given it below. Quite to the contrary, Congress intended that the term "extortion" operate in its generic sense according to modern usage. The proper inquiry, we submit, is whether the intended extortionate acts of the defendant are prohibited by state law. If so, interstate travel in aid of such acts is prohibited by Section 1952 whether the state for its purposes has elected to classify them as extortion, blackmail, intimidation, or under any other equivalent term.

A. A NARROW CONSTRUCTION OF THE TERM "EXTORTION" WOULD UNJUSTIFIABLY FRUSTRATE THE CONGRESSIONAL OBJECTIVE OF BANNING INTERSTATE TRAVEL IN AID OF EXTORTIONATE ACTIVITIES FREQUENTLY CARRIED ON BY ORGANIZED CRIME

Section 1952 is the product of congressional response to problems of interstate racketeering underscored by the Department of Justice in 1961. There can be no doubt that neither the Attorney General, in proposing the bill,[5] nor Congress in enacting it,

[5] "This law has the broadest scope and the greatest potential of the new antiracketeering statutes." Kennedy, *The Program of the Department of Justice on Organized Crime*, 38 Notre Dame Lawyer 637, 639 (1963).

understood "extortion" in its ancient common law sense, as confined to public officers. The statute on its face demonstrates the sweep of congressional concern: "whoever" crosses state lines or uses interstate facilities to carry on extortion is guilty of a federal crime.* Such language plainly includes private persons as well as public officers, and should not be given an unnaturally narrow construction. Cf. *United States* v. *Fabrizio*, 385 U.S. 263, 266-267. Furthermore, joined in the same clause with extortion is an offense which has as its normal focus the corruption of public officers: interstate travel to promote "bribery" is also forbidden. In this context, reading "extortion" as confined only to acceptance of unauthorized fees by public officials, in states which retain that classification, would render the "extortion" branch of the clause practically superfluous. Moreover, the other "unlawful activities" specified, such as liquor violations and gambling, had no common law bounds; reference to these types of crimes unmistakably reveals that Congress was not concerned with common law concepts but with present day meanings.

The legislative history confirms this interpretation. The primary purpose of the bill was directed, not at the misfeasance of public officials, but at organized crime. The bill which ultimately became Section 1952 (S. 1653, 87th Cong., 1st Sess.) was one of a series of

*As the court below noted (A. 21), Congress, after conference (see H. Conf. Rep. No. 1161, 87th Cong., 1st Sess.), rejected a House amendment which would have limited the reach of the statute to extortion (or bribery) "in connection with" the other enumerated crimes: gambling, liquor, narcotics, and prostitution offenses.

measures which were part of the Attorney General's legislative program to combat organized crime and racketeering.[7] See *United States v. Fabrizio*, 385 U.S. 263. It was introduced under the title "Interstate and foreign travel in aid of racketeering enterprises." The Senate Report quoted the testimony of the Attorney General that "only the Federal Government can shut off the funds which permit the top men of organized crime to live far from the scene and, therefore, remain immune from the local officials. So we believe that the Federal Government has a definite responsibility to move against these people and limit their use of interstate commerce." The report also quoted from a letter of the Attorney General: "Over the years an ever-increasing portion of our national resources has been diverted into illicit channels. Because many rackets are conducted by highly organized syndicates whose influence extends over State and National borders, the Federal Government should come to the aid of local law enforcement authorities in an effort to stem such activity." S. Rep. No. 644, 87th Cong., 1st Sess., pp. 3–4. See also, H. Rep. No. 966, 87th Cong., 1st Sess., pp. 2–5.

Extortion had long been known to be one of the major sources of income for organized crime. See, e.g., S. Rep. No. 307, 82d Cong., 1st Sess., pp.

[7] See generally Miller, *The "Travel Act": A New Statutory Approach to Organized Crime in the United States*, 1 Duquesne L. Rev. 181 (1963); Pollner, *Attorney General Robert F. Kennedy's Legislative Program to Curb Organized Crime and Racketeering*, 28 Brooklyn L. Rev. 37 (1961).

[8] The differences between the Senate and House versions of the bill were resolved at a conference. See note 6, *supra*, p. 9.

1–2.[9] The bill was thus primarily designed to dry up the "clandestine flow of profits"[10] reaped by organized crime from activities illegal under state law. Nowhere in the legislative history is there any suggestion that this statute, which was confidently viewed as an effective weapon against a national problem, would be rendered inapplicable to extortionate activities in states which use the caption "extortion" only with reference to public officials.

Section 1952 manifests a congressional judgment that the ease with which syndicate operatives could effectively flout state laws in certain fields constituted a national problem. The Travel Act was expressly designed to assist states in enforcing their local laws against the types of activities that Congress viewed as filling the coffers of organized crime.

It would defeat that purpose to allow the peculiar variations of state terminology to disrupt the objective of the federal statute. Yet this is precisely the consequence of the decision below. To illustrate: In *United States* v. *Schwartz*, Nos. 16465, 16466 (C.A. 7), decided July 12, 1968, the defendants were charged with interstate travel to promote extortion in violation of Title 76, Ch. 19, Section 19–1 of the Utah Code, which provides that "[e]xtortion is the obtaining of

[9] At present, organized crime commonly uses extortion to assist it in "loan-sharking" (its second largest source of revenue), infiltration of legitimate businesses, and labor racketeering. See President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Organized Crime*, 3–5 (1967).

[10] S. Rep. No. 644, 87th Cong., 1st Sess. p. 4 (quoting the Attorney General).

property from another with his consent induced by a wrongful use of force or fear." The criminal scheme there was essentially the same as that spelled out in the instant indictments. Except for the fact that the statutory label in Utah for this conduct is "extortion" rather than "blackmail", as in Pennsylvania, the laws of both states, without further distinction, forbid this conduct. No explanation appears why Congress should have wished to support enforcement of Utah's statute on this problem, but to leave interstate commerce available to those who would violate Pennsylvania's essentially indistinguishable state law aimed at the same problem.

If this were an isolated disparity, perhaps Congress could be charged with an oversight; but that is not the case. Thus, focusing on the precise form of conduct alleged here, it has been said that "the threat to accuse another of any crime is expressly included in nearly every American extortion statute." A.L.I., *Model Penal Code,* Section 206.3, Comment 5, p. 76 (Tent. Draft No. 2, 1954). Yet, as the same source summarized, these proscriptions "in present law are designated as extortion, blackmail, demanding by menaces and robbery * * *". *Id.,* Comment 1, p. 74.[11] See, *e.g., McIntosh* v. *United States,* 385 F. 2d 274 (C.A. 8) ("robbery in the third degree"). The American Law Institute in 1954, in its draft of a Model Penal Code, labeled the modern concept of extortion as "Theft by Intimidation." (See Section 206.3, *supra.*) When Illinois revised its criminal code in 1961, that state

[11] We have categorized the various state statutes in Appendix B, *infra,* pp. 29–31.

adopted substantially the same approach. Instead of the separate extortion statute which it previously had, Illinois included extortion in a provision of the general *theft* statute by a subsection which provides that "[a] person commits theft when he knowingly obtains by threat control over property of the owner." "Threat" was defined to include the methods of intimidation commonly considered to be elements of extortion. Illinois Criminal Code of 1961, §§ 15–5, 16–1, S.H.A. ch. 38, §§ 15–5, 16–1. (See, also, App. B, *infra*, p. 30.) Both before and after 1961, the same extortionate conduct violated Illinois law. Congress should certainly not be held to have intended that a state which adopted the arrangement and classification of a modern criminal code would thereby remove itself from the protection of a significant anti-racketeering statute.

Congress did not intend to close off criminally bent travel into some states but not into others which prohibit the same acts, merely because their draftsmen employed different terminology in their criminal codes. A reading of the congressional hearings and reports reveals concern about categories of crime, not preoccupation with captions. To be faithful to the congressional purpose, we submit, what is determinative must be whether the conduct is within the generic connotation of "extortion", as Congress used the term, *and* whether the activity is prohibited by state law. It should make no difference that the state may list the crime under "blackmail", or some other heading.

B. NO CONFLICTING POLICY OR LANGUAGE IN THE STATUTE COMPELS THE STRAINED READING GIVEN BY THE COURT BELOW

The district court felt obliged to reach the result it did because the language of the statute speaks of activities, including extortion, "in violation of the laws of the State in which committed" and because it had been recognized that the content of state crimes may vary from state to state (A. 21-22). Nothing in this language, however, or in its underlying purpose, conflicts with the congressional usage of "extortion" in its generic sense, applicable wherever extortionate acts are made punishable by state law.

As we have seen, Section 1952 was drafted and enacted because the mobility of modern racketeers gave them a practical advantage in carrying on certain highly profitable types of illicit activities while avoiding arrest or prosecution in the state whose laws were actually violated. The measure sought to strike at the source of this advantage by closing the channels of interstate commerce through which such persons adroitly conducted their operations. Because the avowed purpose was to plug the breach in effective state enforcement, Congress related the activities banned to violations of the laws of the state in which they take place. But the court below went astray in ignoring the clear federal interest at stake here: it was precisely because organized crime presents a problem of national dimension that concerted federal intervention was found necessary. And in analyzing and discussing this section the focus was on the categories of activity which, *across the nation*, attract the attention of the organized, professional criminal.

Thus, the statute reflects an independent federal concern (see *McIntosh* v. *United States*, *supra*, 385 F. 2d at 278) about certain *types* of activity, while recognizing as a practical matter that the problem is not as pressing where the particular state involved has not seen fit to make a specific form of that conduct illegal.

The district court seized upon one exchange in the legislative hearings on the bill [17] and from it extrapolated an inaccurate generalization (A. 21–22). The hypothetical situation being discussed involved a gambler who operated a dice table in Nevada, where such a business is lawful, and then sought to open a similar venture in Colorado, where it would not be. It was conceded that the lawfulness of his business in Nevada would control the permissibility of his first instance of interstate travel. From this the court below inferred sweepingly that all statutory terms in Section 1952 must "track closely the[ir] legal understanding under state law" and not be "more generic in scope" (A. 22). This conclusion does not follow.[18] Most significantly, in the facts of the hypothetical example, the traveler's activity was lawful where engaged in, while in the case at

[17] *Hearings on H.R. 6572 etc. before Subcomm. No. 5 of the House Comm. on the Judiciary*, 87th Cong., 1st Sess., pp. 340–341 (May 1961) (testimony of Assistant Attorney General Miller).

[18] In trying to relate this example to the case at bar, the court overlooked the fact that the hypothetical traveler's first trip to Colorado was agreed to fall outside this statute because an essential element under Section 1952(b)(*1*) is that the traveler must be conducting an *unlawful* gambling "*business*", and in the hypothetical the illegal business had not yet been established. Under (b)(*2*), involved here, however, even a single instance of illegal extortion satisfies the statute.

bar, appellees' conduct undeniably violated Pennsylvania law. Thus, to say that the statute does not reach interstate travel by one carrying on a lawful type of "gambling" is quite different from establishing that "gambling" for purposes of the federal statute is rigidly controlled by what Nevada defined gambling—lawful and unlawful—to include. For example, if the Nevada statutes explicitly permitted operation of a dice parlor under its Public Amusements code, and never used the term gambling, it would nevertheless be to that code to which the federal law would direct our attention to test the lawfulness of the hypothetical traveler's trip to Colorado. And conversely, we submit, if Nevada prohibited the conduct of a dice game (or a lottery) under a statute banning "Public Nuisances," and did not use the term "gambling" in the proscription—or its caption—, Section 1952 would include that conduct under the federal statute's description of "gambling". Nothing in the exchange relied on by the court below, or elsewhere in the legislative history, undermines this clearly intended understanding.

In referring to congressional awareness that the content of laws governing "gambling" would vary from state to state, and inferring from this that "extortion" as used in Section 1952 comprehends only an offense so described by the state involved, the district court misapprehended the purpose and effect of making state norms controlling. The objective of assisting state law enforcement is reflected in the decision to withhold federal penalties for conduct which is not an offense at all under state law. Respect

for a state's decision to allow certain forms of gambling to take place does not fairly imply, however, much less demonstrate, that the federal statute fails to reach the forms of gambling that are made illegal, albeit under a different name. An example that parallels the case at bar will illustrate this point: if a state in its chapter dealing with "Gambling" outlawed only operating a dice parlor or a poker game or a roulette wheel, but in a chapter regulating "Public Amusements" allowed horse racing while banning off-track bookmaking, the reasoning of the court below would render Section 1952 inapplicable to travel in aid of the bookmaker's enterprise. "Gambling" in that state would be held to have a distinct meaning not including "bookmaking," elsewhere made punishable. Yet, throughout the congressional hearings, this type of activity was discussed as the archetypical illustration of the interstate "gambling" the section was designed to halt.[14]

Turning, then, to "extortion," the result below may be seen to be in error for the same reason. We would agree, for example, that if by state statute, whether labelled blackmail or extortion, a crime is committed only when money or property is extracted by threat of force, then travel to that state in order to make threats to accuse a person of an infamous crime

[14] In California, for instance, laws regulating the generic subject of "gambling" are arranged in a chapter entitled "Gaming". Calif. Penal Code § 330 *et seq.* And Section 337a outlaws "bookmaking" without using the word "gambling"—the term Congress employed in the Travel Act to include, *inter alia*, bookmaking.

would not be an offense under 18 U.S.C. 1952. Such an interpretation would give full force to the congressional purpose to rest the applicability of Section 1952 on a finding that the particular activity sought to be carried on is unlawful under the laws of the state where the conduct will take place.

But where the conduct is extortionate in the federal, generic usage—like "gambling" in the examples above—*and* where the state does make it unlawful, Section 1952 is by its terms and its purpose applicable—just as it would be applicable to the interstate bookmaker just discussed. Only in this way is the statute saved from the tyranny of mere labels, and only in this way is the anomaly of the result below avoided.

In summary, the term "extortion" in Section 1952, when properly understood, comprehends any provision of state law forbidding extortionate activities, irrespective of the caption given the relevant provision or its location in the state penal code. There is no necessity to read into the section the peculiar variations of state terminology in order to give effect to the public policy of a state. Any other construction would turn what was regarded as a nationally effective weapon against organized crime into a hollow charade of no significance in the approximately one-third of the states (App. B, *infra*, pp. 29–30) which

happen not to call all extortionate activities "extortion".[15]

II

AT THE VERY LEAST, THE TERM "BLACKMAIL" IS SO COMMONLY USED AS A SYNONYM FOR EXTORTION THAT ACTIVITIES LABELLED "BLACKMAIL" BY A STATE ARE PROPERLY DEEMED "EXTORTION" IN VIOLATION OF THE LAWS OF THE STATE IN WHICH COMMITTED UNDER 18 U.S.C. 1952

A. "BLACKMAIL" IS A GENERALLY RECOGNIZED SYNONYM FOR "EXTORTION"

Even if the Court should conclude that Section 1952 does not use the term "extortion" in its comprehensive, generic sense, the indictments in the present case ought still to be reinstated. If some significance is to be attached to the state denomination of an offense, we submit that at least where a state uses the expression "blackmail," this classification should be regarded as merely a synonym for "extortion". Extortion long ago lost its narrow common law denotation as limited to acts of public officers and the term has generally

[15] In *McIntosh* v. *United States*, *supra*, the court of appeals upheld a prosecution under this section even though the Missouri statute involved classified the extortionate activities engaged in as "robbery in the third degree" rather than as "extortion." The court observed, in a passage materially misquoted by the court below (A. 22): "Reference to state law is necessary only to identify the type of unlawful activity in which the accused was engaged." 385 F. 2d at 276.

been accepted as covering both common law extortion and blackmail (see pp. 6–7, *supra*).[16]

As early as 1864 it was said that "[i]n common parlance, and in general acceptation, [blackmail] is equivalent to, and synonymous with, extortion—the exaction of money, either for the performance of a duty, the prevention of an injury, or the exercise of an influence. It supposes the service to be unlawful, and the payment involuntary. Not infrequently it is extorted by threats, or by operating upon the fears or the credulity, or by promises to conceal, or offers to expose, the weaknesses, the follies or the crimes of the victim." *Edsall* v. *Brooks*, 26 How. Pr. 426, 431–432; see, also, *Mitchell* v. *Sharon*, 51 Fed. 424, 425–426 (N.D. Calif.); *Hess* v. *Sparks*, 44 Kan. 465 (1890); 8 R.C.L. § 315, pp. 293–294 (1915); Comment, *A Study of Statutory Blackmail and Extortion in the Several States*, 44 Mich. L. Rev. 461 (1945). As a result, it is not surprising that the terms blackmail and extortion have been freely interchanged. For example, 18 U.S.C. (1940 ed.) 250 was entitled "Extortion by informer" and its predecessor statute was treated as an extortion statute by this Court in *Sexton* v. *California*, 189 U.S. 319. Yet in the 1948 revision of the criminal code, this

[16] In this respect, extortion is similar to "arson", which at common law was limited to the burning of dwellings but which is now generally used by lawyers and laymen to apply to the willful burning of other types of buildings. In 1965, Congress added "arson" to bribery and extortion as offenses considered unlawful activities under Section 1952(b)(2). See 79 Stat. 212. The examples of the type of incendiary burning meant to be covered clearly demonstrate that the statute applies in the modern sense, to commercial structures. See S. Rep. No. 351 and H. Rep. No. 264, 89th Cong., 1st Sess.

statute was relabeled "blackmail". See 18 U.S.C. 873. In Washington the statutes entitled "extortion" and "blackmail" overlap. Revised Code of Washington, §§ 9.33.010, 9.33.050. In Ohio, one statute is labeled "blackmail" (Ohio Revised Code 1953, § 2901.38) while another prohibiting similar conduct is entitled "extortion" (Ohio Revised Code 1953, § 2907.01). See, also, 1909 New York Penal Law §§ 851, 856; Montana Revised Code §§ 94-1601, 94-1609. Legal opinions also frequently do not distinguish between these two terms. See *People* v. *Mahumed*, 381 Ill. 81, 44 N.E. 2d 911, 912; *Salley* v. *United States*, 306 F. 2d 814 (C.A. D.C.); *Slater* v. *Taylor*, 31 App. D.C. 100; *United States* v. *Local 807*, 118 F. 2d 684, 687-688 (C.A. 2), affirmed, 315 U.S. 521; *United States* v. *Compagna*, 146 F. 2d 524 (C.A. 2), certiorari denied, 324 U.S. 867; *People* v. *Williams*, 59 Pac. 581. Legal writers also draw no distinction. Williams, *Blackmail*, [1954] Criminal Law Review 79; Winder, *The Development of Blackmail*, 5 Modern L. Rev., 21, 23-24. In this light, even minimal regard for the congressionally intended scope of Section 1952 would warrant interpreting a state's proscription of "blackmail" as included within the federal usage of "extortion".

B. THE LAW OF PENNSYLVANIA TREATS "BLACKMAIL" AS SYNONYMOUS WITH "EXTORTION"

Pennsylvania, where the instant prosecutions arose, follows the same approach. Thus, the two Pennsylvania "blackmail" statutes, 18 Pa. Stat. 4802 and 4803, which appellees were charged with traveling in interstate commerce to violate, are entitled "Blackmail by

injury to reputation or business" and "Blackmail by accusation of heinous crime," respectively (App. A, *infra*, pp. 27–28).[17] Both, however, make an intent to "extort" essential elements of the defined crimes. Section 4802, moreover, speaks alternatively of an intent to "levy blackmail, or extort money." Further evidence of the interchangeability with which the terms are used in Pennsylvania appears from the history of these statutes. Prior to the enactment of the 1939 Penal Code, the offenses here at issue were listed under a general caption "Threats Extortion or Blackmailing". The predecessor of Section 4803 was 18 Purdon's Pa. Stat. § 2933 (1936) entitled "Extortion by threats to accuse of an infamous crime," while the forerunner of Section 4802 was 18 Purdon's Pa. Stat. §§ 2931, 2932 (1936) captioned "Penalty for Blackmailing" and "Levy or attempting to levy blackmail." It is thus clear that the Pennsylvania statutes have made no deliberate or meaningful distinction between the terms "extortion" and "blackmail".[18]

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[17] There is some authority that "extortion" first began to develop as a modified form of robbery in the context of a threat to accuse of an infamous crime, as alleged in these indictments. See Michael & Wechsler, *Criminal Law and Its Administration* (1940), p. 384, n. 4.

[18] The Pennsylvania Supreme Court has recently held that a heading prefixed to a criminal statute does not limit its application or control its construction. *Commonwealth* v. *Shafer*, 414 Pa. 613, 202 A. 2d 308 (1964).

In addition, we point out, in the codifier's list of cross-references following 18 Pa. Stat. 4318—the "Extortion" statute dealing with public officers' receipt of unauthorized fees, which the court below found was the only crime of "extortion" recognized in Pennsylvania—there appears a reference to, *inter alia*,

And despite the strained efforts of the court below to avoid the consequences of the Pennsylvania decisions (A. 22–23), it is also clear that the courts in Pennsylvania use the terms as synonyms. In *Commonwealth* v. *Nathan*, 93 Pa. Super. 193, 197, for example, the court said:

> In common understanding, blackmail and extortion describe the same conduct. While extortion at common law was an offense committed by an officer under color of his office, the term has a broader significance in modern legislation and applies to persons who exact money either for the performance of a duty, the prevention of injury, or the exercise of influence. It covers the obtaining of money or other property by operating on fear or credulity or by promise to conceal the crimes * * *.

And in *Commonwealth* v. *Burdell*, 380 Pa. 43, 48, 110 A. 2d 193, the court described "extortion" as obtaining property with the consent of the victim "induced * * * by the threat of some exposure or the making of some criminal charge * * *." In *Commonwealth* v. *Downer*, 159 Pa. Super. 626, 49 A. 2d 516, the court was confronted with a scheme indistinguishable from that charged here; recognizing the essential identity of extortion and blackmail, it upheld a conviction for violation of 18 Pa. Stat. 4803 (the statute presently entitled "Blackmail by accusation of heinous

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Sections 4802 and 4803 as treating "Extortion by others than public officers." See, also, 36 Pa. Stat. 2293 ("Extortion from travelers by road or highway workmen").

crime.") under an indictment which charged "extortion by accusation of heinous crime."[12] Indeed, the single decision relied on by the court below, *Commonwealth* v. *Hoagland*, 93 Pa. Super. 274, 276, points in the direction we urge. Thus, after explaining in the passage quoted by the district court (A. 23) that the general blackmail statute (18 Pa. Stat. 4801) is not concerned with common law extortion, the Pennsylvania court immediately proceeded to say it punishes one who "levies blackmail or extorts money", and defined extortion in the modern, comprehensive sense.

The court below candidly conceded that extortion and blackmail "are often confused in statutory, judicial, and common, language" (A. 22). However, the court then relied on this settled "confusion" as a basis for *distinguishing* between extortion and blackmail for purposes of construing Section 1952. The fact that these terms are commonly used interchangeably, we submit, demonstrates on the contrary at least that Congress did not mean to resuscitate a fine line that law, language, and history have abandoned. Since the word "extortion" can naturally be read as a synonym for "blackmail," if the Court rejects our argument that Congress used the word generically the statute should be construed at least as comprehending those states, like Pennsylvania, which use the term "blackmail" (see App. B, *infra*, p. 29).

[12] See, also, *Commonwealth* v. *Bernstine*, 103 Pa. Super. 518, 157 Atl. 698 (conviction for "extortion" upheld under general "blackmail" statute, 18 Pa. Stat. 4801), affirmed on opinion below, 308 Pa. 394, 162 Atl. 297; *Commonwealth* v. *Kirk*, 141 Pa. Super. 123, 136, affirmed, 340 Pa. 346.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be reversed and the indictments ordered reinstated.

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AUGUST 1968.

APPENDIX A

Title 18, § 4318 of the Pennsylvania statutes provides:

§ 4318. Extortion

Whoever, being a public officer, wilfully and fraudulently receives or takes any reward or fee to execute and do his duty and office, except such as is or shall be allowed by some act of Assembly, or receives or takes, by color of his office, any fee or reward whatever, not, or more than is, allowed by law, is guilty of extortion, a misdemeanor, and on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars ($500), or to undergo imprisonment not exceeding one (1) year, or both. 1939, June 24, P.L. 872, § 318.

Title 18, § 4801 of the Pennsylvania statutes provides:

§ 4801. Blackmail

Whoever by means of written, printed or oral communications, intimidates, or levies blackmail, or extorts money, property or other valuable thing from any person or by such means attempts to intimidate, annoy, or levy blackmail, or extort money, property or other valuable thing from any person, is guilty of a misdemeanor, and on conviction, shall be sentenced to imprisonment not exceeding three (3) years, or to pay a fine not exceeding two thousand dollars ($2,000), or both.

Title 18, § 4802 of the Pennsylvania statutes provides:

§ 4802. Blackmail by injury to reputation or business

Whoever, with intent to intimidate, annoy or levy blackmail, or extort money, property or other valuable thing from any person, by means of threats, charges or accusations by written, printed, or oral communications, injures the person, property, reputation or business of any person, is guilty of a misdemeanor, and on conviction, shall be sentenced to imprisonment, by separate or solitary confinement at labor or by simple imprisonment, not exceeding three (3) years, or to pay a fine not exceeding two thousand dollars ($2,000), or both. 1939, June 24, P.L. 872, § 802.

Title 18, § 4803 of the Pennsylvania statutes provides:

§ 4803. Blackmail by accusation of heinous crime

Whoever accuses any person of any heinous crime, or of any assault with intent to commit such heinous crime, or any attempt to endeavor to commit the same, or of making or offering any solicitations, persuasion, promise or threat to any person, whereby to move or induce such person to commit, or permit such heinous crime, with a view and intent to extort or gain from such person, or by intimidating such person by such accusation or threat, extorts or gains from such person any money or property, is guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five thousand dollars ($5,000), or to undergo imprisonment, by separate or solitary confinement at labor, not exceeding ten (10) years, or both. 1939, June 24, P.L. 872, § 803.

APPENDIX B

The following jurisdictions in addition to Pennsylvania make it an offense to obtain money or property by threatening to accuse the victim of crime or otherwise to injure his reputation but do not label that offense "extortion."

Blackmail Statutes:

Alabama—Code of Alabama, Title 14, §§ 49, 50

Alaska—Statutes 1962, § 11.15.300

Arkansas—Statutes 1947, § 41-4002

Connecticut—General Statutes (1958), § 53-40

District of Columbia—D.C. Code, § 22-2305

Georgia—Ga. Code, § 26-1801

Kentucky—Revised Statutes (1963), § 435.270

Montana—Revised Codes, § 94-1609

Nebraska—Revised Statutes (1943), §§ 28-441 *et seq.*

New Hampshire—Revised Statutes (1955), § 572:46

North Carolina—General Statutes, §14-118

Ohio—Revised Code 1953, § 2901.38

South Carolina—Code of Laws, 1962, § 16-566.1

Wyoming—Statutes (1957), § 6-147

Robbery Statutes:

Kansas—Kansas Statutes, § 21-529

Mississippi—Code, § 2365

Missouri—Vernon's Annotated Statutes, § 560.130

One state, Rhode Island, punishes this conduct under a statute entitled "Extortion and Blackmail":

Rhode Island—General Laws, § 11–42–2

Colorado, Illinois and Indiana include such conduct under statutes entitled "threat" and "theft"; Minnesota under its "coercion" statute; and Wisconsin under the heading "threats":

Colorado—Revised Statutes, § 40.5–2 (Ch. 312, Laws 1967)
Illinois—Statutes, Chapter 38, §§ 15–5, 16–1
Indiana—Burns' Annotated Statutes (1968 Supp.), §§ 10–3030, 10–3040(18)
Minnesota—Statutes, Criminal Code of 1963, § 609.27
Wisconsin—Statutes, § 943.30.

Such conduct would probably be covered under both an extortion and a blackmail statute in two states:

Delaware—Code Title 11 §§ 502, 503
Washington—Revised Code, §§ 9.33.010, 9.33.050

The remainder of the states define this offense under such titles as extortion, fear used to extort, intent to extort, malicious threats to extort and larceny by extortion.

Arizona—Revised Statutes, § 13–401
California—Penal Code, § 519
District of Columbia—§ 1501, Pub. L. 90–351, 82 Stat. 238
Florida—Statutes, § 836.05
Hawaii—Revised Laws, § 11271
Idaho—Code, § 18–2802
Iowa—Code, § 720.1
Louisiana—Revised Statutes, § 14–66
Maine—Statutes, Title 17, § 3702
Maryland—Statutes, Article 27 §§ 561, 562
Massachusetts—Laws, Chapter 265, § 25
Michigan—Statutes, § 28.410
Nevada—Revised Statutes, § 205.320

New Jersey—Statutes, §§ 2A:105–3, 2A:105–4
New Mexico—Statutes, § 40A–16–8
New York—Penal Law, § 155.05
North Dakota—Code, § 12–37–02
Oklahoma—Statutes, Title 21, § 1482
Oregon—Revised Statutes, § 163.480
South Dakota—Code, §§ 13.3905, 13.3906
Tennessee—Code, § 39–4301
Texas—Penal Code, Art. 1268, 1301
Utah—Code, § 76–19–2
Vermont—Statutes, Title 13, § 1701
Virginia—Statutes, § 18.1–184
West Virginia—Code, § 61–2–13

U.S. GOVERNMENT PRINTING OFFICE: 1968

COUNTER-STATEMENT OF THE ISSUES PRESENTED

Whether the indictment charges the appellees with a crime under Title 18 U.S.C. 1952?

Whether the crime of "blackmail" can be equated with the crime of "extortion" under the law of Pennsylvania?

Whether it was the intention of Congress to equate the crime of "blackmail" with the crime of "extortion" in those states which, like Pennsylvania, legally distinguish the two offenses?

In the Supreme Court of the United States

October Term, 1968
No. 51

UNITED STATES OF AMERICA,
Appellant

vs.

JOSEPH FRANCIS NARDELLO and
ISADORE WEISBERG,
Appellees

On Appeal from the United States District Court for the Eastern District of Pennsylvania.

BRIEF FOR APPELLEES

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COUNTER-STATEMENT OF THE CASE

The defendants, Isadore Weisberg and Joseph Nardello are indicted on two bills of indictment and charged with violations of 18 U.S.C., Section 1952, Section 371, Section 2. The two bills of indictment differ only in that bill 22709 charges a fourth defendant, William Joseph Burke with this crime and alleges a date approximately a year earlier than bill of indictment 22718. The defendants Weisberg and Nardello are similarly charged in both bills.

Count one of both bills charges the defendant Kaminsky and in one instance the defendant Burke with unlawfully traveling in interstate commerce from Chicago, Illinois to Philadelphia in the Eastern District of Pennsylvania with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, to wit, the crime of Blackmail by Injuring Reputation and Business in violation of Sec. 4802 of the Pennsylvania Penal Code and Blackmail by Accusation of Heinous Crime in violation of Sec. 4803 of the Pennsylvania Penal Code. This count further alleges that defendants Kaminsky and Burke did subsequently perform acts in pursuance of this intention to commit unlawful activity.

Count two of both bills charges the defendant Weisberg, the defendant Nardello, the defendant Kaminsky, and in one instance the defendant Burke with unlawfully conspiring to commit a violation of Sec. 1952 of Title 18

of the United States Code. The allegations are there made that the defendants Nardello and Weisberg met with and supplied information for the "unlawful activity" of the defendants Kaminsky and Burke.

The facts charged in the indictment further allege that the defendant Kaminsky, in both bills, and the defendant Burke, in one bill, subsequently visited a victim and related to the victim that they, Kaminsky and Burke, were members of the Philadelphia Police Department and that the victim was subject to an immediate arrest unless he paid them a sum of money. Bill 22709 further charges that Kaminsky and Burke obtained $5000.00 from the victim as a result of these untrue allegations.

These defendants are indicted pursuant to Sec. 1952 of Title 18 of the United States Code. This section makes it a federal crime to travel in interstate commerce to "promote, manage, establish, carry on, or facilitate, etc., any unlawful activity." Other charges in the bills of indictment which tend to establish the guilt of the defendants, Nardello and Weisberg, by reason of any conspiracy theory depend for their validity upon the acts committed in violation of Sec. 1952.

On motion of the appellees, the district court dismissed the indictments. The court ruled that the conduct charged in the indictment could not constitute extortion under the Pennsylvania Penal Code, and therefore the indictments failed to charge the appellees with a crime within the meaning of Title 18 U.S.C. 1952.

ARGUMENT

I.

The Indictment Does Not Charge a Crime Under Title 18 U.S.C., Sec. 1952

Only travel in interstate or foreign commerce which is directed toward "unlawful activity" is illegal under Sec. 1952. "Unlawful activity" is specifically defined under that section by referring to certain enumerated offenses. Blackmail is not one of these offenses. Moreover, Blackmail by Accusation of Heinous Crime and Blackmail by Injuring the Reputation and Business are not among these enumerated offenses.

The activity of the defendant as described in the bill of indictment could arguably result in their convictions for Blackmail by Accusation of Heinous Crime in Pennsylvania. It could not, however, result in their conviction for any of the crimes defined as "unlawful activity" under Sec. 1952 of Title 18. Moreover, since there is a specific statute defining as a crime the activity charged in this case (18 P.S. 4803, Blackmail by Accusation of Heinous Crime) they could not properly be convicted in Pennsylvania of either Blackmail or Blackmail by Injury to Reputation or Business. *Commonwealth v. Litman*, 187 Pa. Superior Ct. 531 (1958). Thus it is unlikely that the defendants in the instant action could have been convicted of the crime of blackmail in violation of the laws of Pennsylvania. For this reason the indictment is defective. The defect is not such that it could be remedied by subsequent legal proceedings.

II.

Blackmail Cannot Be Equated With Extortion Under the Law of Pennsylvania

The indictment attempts to equate the conduct of the defendants charged therein with the crime of extortion. Extortion is one of the enumerated "unlawful activities" within Sec. 1952. If any of the defendants so charged in the indictment had committed extortion after traveling in interstate commerce as charged in the indictment, there is little doubt that they could be convicted under Sec. 1952.

Extortion is specifically defined by statute in Pennsylvania.

> "Whoever, being a public officer, wilfully and fraudulently receives or takes any reward or fee to execute and do his duty and office, except such as is or shall be allowed by some act of Assembly, or receives or takes, by color of his office, any fee or reward whatever, not, or more than is, allowed by law, is guilty of extortion, a misdemeanor, and on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars ($500), or to undergo imprisonment not exceeding one (1) year, or both."
>
> 1939, June 24, P.L. 872, §318, 18 P.S. §4318.

Cases are legion in Pennsylvania deciding whether or not various public officials are "public officers" under the statute. However, nowhere has it been successfully contended that one who is not a "public officer" could be

guilty of extortion. To do so would be a ridiculous abuse of the statute.

The defendants in this bill of indictment are not and never were "public officers" either in Pennsylvania or anywhere else. On the contrary, they are accused of impersonating police officers of the City of Philadelphia. The United States Government therefore not only concedes but contends and will prove at trial that these people are not "public officers" of Pennsylvania.

Sec. 1952 specifically refers to state law as defining the offenses used in the "unlawful activity." Under the law of Pennsylvania, the defendants could never have been convicted of extortion.

III.

Congress Never Intended To Equate Extortion With Blackmail in Those States, Like Pennsylvania, Which Legally Distinguish the Two Offenses

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The Government urges upon this Court that it equate the crimes of blackmail and extortion under the laws of Pennsylvania for purposes of Sec. 1952. They contend that this is the true meaning of Congress. While they admit that Congress did not undertake in the statute to define "extortion" they urge that Congress really intended that the term "extortion" operate in its generic sense according to modern usage.

The Government concedes that the common law concept of the term "extortion" designated the crime committed by a public officer. After a review of the problems which faced Congress at the time the Act in question was passed and a notation of the philosophical aims of the proponents of the Act they conclude that these purposes would best be served if "extortion" were given the widest possible meaning.

Of course, from the Government's point of view, it would have been far more fitting had Congress undertaken to outlaw all criminal activity connected with interstate commerce. A simple reading of Sec. 1952 shows that this was obviously not the intention of the Congress. There are many serious crimes which were not defined as "unlawful activity." Then too, as the Government so

aptly points out in its Appendix B there existed at that time a vast lack of uniformity among the states regarding the definition of the term "extortion." We cannot assume that Congress was ignorant of this lack of uniformity. On the contrary, it is eminently clear that Congress fully intended this lack of uniformity to continue when it added the phrase "in violation of the laws of the state in which committed" to Sec. 1952. This phrase has an even deeper meaning in Sec. 1952. Arguably it would exempt from this section those individuals whose activity may be proscribed by state laws but who, for one reason or another, were not found "in violation" of the laws of those states. But whatever intention was in the mind of Congress when this statute was finally brought forth as a full-fledged law, it is too clearly drawn to permit the inference that Congress was describing a form generic activity. This they could readily have done by defining "extortion." Not only did they fail to so define this term but they specifically established the defining standard as that being in existence throughout the various states at any time in the future when prosecution was contemplated under Sec. 1952.

The United States Government does not have primary jurisdiction over internal crimes committed within a state. Its jurisdiction, in the present statute, depends upon travel in interstate commerce. However, its definition of "unlawful activity" was logical in not mentioning the crime of blackmail as defined by the law of Pennsylvania.

Blackmail is a crime which takes place between two private citizens. This certainly is a problem of local concern. Extortion, on the other hand, and bribery, which is also mentioned under Sec. 1952, both demand the partici-

pation, in one way or another, of public officials. By the inclusion of these two crimes and the exclusion of blackmail, the Government showed its concern for decent and efficient operations in local government. Assuming that there is such law enforcement machinery present within a state, the government has quite clearly indicated its intention not to interfere by excluding blackmail, and numerous other serious crimes which do not affect the moral fiber of local government.

The difference between blackmail on one hand and bribery and extortion on the other hand, is so natural that the court can not assume that the government meant to include blackmail activity under the definition of extortion and bribery. Such a definition does not limit the purpose of this "Travel Act." Criminal activity which the Government seeks to include within this Act is always punishable by the states themselves. As a matter of fact nothing in this Act seeks to enlarge the ability of either the state or the federal government to punish criminal actions. So long as efficient law enforcement machinery exists within a state, a defendant may always be punished under state law. Such is clearly evident in the instant case. Where, however, this law enforcement machinery is not able or willing to efficiently prosecute, the federal government seeks to enter the prosecution field through the vehicle of the "Travel Act." Its distinction between crimes which affect the efficiency of local law enforcement and those which do not is not only proper but highly logical.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be sustained and the indictments against the appellees ordered quashed.

Respectfully submitted,

F. EMMETT FITZPATRICK, JR.,

A. CHARLES PERUTO,

Attorneys for Appellees.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 51

UNITED STATES OF AMERICA, APPELLANT

v.

JOSEPH FRANCIS NARDELLO AND ISADORE WEISBERG

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

During oral argument in this case on November 12, 1968, Mr. Justice Stewart asked counsel for the United States whether the legislative history of the Travel Act, 18 U.S.C. 1952, was completely silent on what Congress understood the term "extortion" to mean. In response to that question, counsel stated that while the hearings and committee reports did not present any discussion focusing on the intended content of this term in the draft bill, a letter from the Department of Justice to the Chairman of the House Judiciary Committee, objecting to a subcommittee amendment, revealed that the Department, in sponsoring the bill, had understood that it would cover, *inter alia*, "shakedown" extortions and that the sub-

825-966—68

committee amendment would eliminate such extortions (and others) from the purview of the bill. Counsel argued that it was in this context that the conference disapproved the House amendment which had "limited the coverage of the bill" and instead adopted the "Senate coverage" as initially submitted by the Department. H. Conf. Rep. No. 1161, 87th Cong., 1st Sess., p. 3.

At that juncture, Mr. Justice White inquired whether the letter to which counsel referred was part of the record. Counsel responded that only an excerpt of the letter, reprinted in a law review article cited in the government's brief (p. 10, n. 7), was publicly available. The Chief Justice and Mr. Justice White then asked whether the complete text of the letter could be obtained from the Department's files and furnished to the Court. In accordance with that request, we now submit the full text of the letter as an Appendix to this Memorandum. The portion quoted in Mr. Pollner's law review article (28 Brooklyn Law Review 37, 41) and referred to at oral argument comes from the discussion of S. 1653, the bill that became the Travel Act (pp. 4–5, *infra*).

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1968.

APPENDIX

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C.

August 7, 1961

Honorable Emanuel Celler
Chairman
House Committee on the Judiciary
House of Representatives
Washington, D.C.

Dear Mr. Chairman:

This is in reference to the enactments S. 1654, S. 1656, S. 1657, S. 1665 which have been ordered reported by Subcommittee No. Five to the full committee and S. 1655 which is still before Subcommittee No. Five.

The position of the Department with respect to the subject enactments is as follows:

S. 1665 OBSTRUCTION OF INVESTIGATIONS

When this proposal was being considered by the Senate Committee on the Judiciary, the Attorney General and I agreed to a proposed amendment which would limit the obstruction of investigations to those investigations conducted by the Department of Justice and the Department of the Treasury. The amendment, thus, limited the obstruction to those investigations most likely to involve organized crime and racketeering. While I appreciate the action of the Subcommittee in amending the proposal to re-

turn it to the form in which it was introduced, the Department has no objection at this time to limiting the reach of the statute to investigations conducted by the Department of Justice and the Department of the Treasury as proposed by the Senate Committee.

S. 1656 TRANSMISSION OF WAGERING INFORMATION

The Subcommittee has corrected a typographical error in the Senate version, which this Department favors.

S. 1653 INTERSTATE TRAVEL

The Subcommittee has combined Section 1 and 2 of the proposal as passed by the Senate enlarging the scope of the bill to include

> "Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mails. . ."

The Department does not object to this drafting change if the words "after such travel" are deleted from line 7, page 2. As the proposal now stands it proscribes the use of the mails for the stated purposes but requires further act "after such travel." The failure to delete the words requires travel as well as the use of the mails or the use of any facility in interstate or foreign commerce. Deletion of the three words on line 7, page 2 will remove this anomaly from the proposal.

The Subcommittee further deleted clause 2 of subparagraph (b) dealing with extortion or bribery and defined unlawful activity as "any business enterprise involving . . . . extortion or bribery in connection with such offenses . . ." The effect of this deletion is to require proof that there was a continuous course of conduct involving extortion or bribery in connection with gambling, liquor, narcotics or prostitution. It eliminated from the purview of the bill extortions not related to the four above offenses but which are,

and have historically been, activities which involve organized crime. Such activities as the "shakedown racket," "shylocking" (where interest of 20% per week is charged and which is collected by means of force and violence, since in most states the loans are uncollectable in court) and labor extortion. It also removes from the purview of the bill the bribery of state, local and federal officials by the organized criminals unless we can prove that the bribery is directly attributable to gambling, liquor, narcotics or prostitution.

The Department is strongly opposed to this amendment and recommends that the Committee accept and report the proposal with respect to extortion and bribery as submitted by the Department and as passed by the Senate.

The Subcommittee further deleted the limitation placed upon the type of liquor offenses within the purview of the bill by deleting the words "on which the Federal excise tax has been paid." The Department agreed to the addition of these words by the Senate Committee in order to avoid the problems about which you questioned the Attorney General on June 5, 1961. The amendment would make clear that minor violations involving liquor such as those of liquor retail store owners who remain open after hours in order to sell tax paid liquor [sic]. In view of our agreement with the Senate Committee I would have no objection to retaining the limitation contained in the Senate bill.

S. 1657 WAGERING PARAPHERNALIA

The amendment proposed by the Subcommittee exempts from the purview of the bill "any games sold for use in legally organized clubs, churches or other non-profit organizations." The bill as proposed by the Department and passed by the Senate pro-

hibits the transportation of paraphernalia used in bookmaking, wagering pools with respect to a sporting event, or in number, policy, bolita or similar games when those games are in violation of state law. Forty-nine states prohibit such activities and the Department is strongly opposed to an exemption which will permit paraphernalia used in those activities to be shipped in interstate or foreign commerce merely because they may be used in legally organized clubs, churches or non-profit organizations. In addition the loose phrasing of the amendment would permit any club, not organized contrary to law, to obtain the materials which we think must be banned from interstate commerce if organized gambling is to be destroyed. As the amendment reads it would apply to such organizations as manufacturers associations, labor organizations, as well as any so-called fraternal group or so-called church. In addition if games are not one of the three types of gambling games which are illegal under the law of forty-nine states the bill does not apply to such games. I wish to reiterate my strong opposition to the proposed amendment.

S. 1655 IMMUNITY IN TAFT-HARTLEY AND HOBBS ACT VIOLATIONS

It is my understanding that the sole reason for not reporting this enactment was a problem of the placement of the amending language in Section 3486 of Title 18. The Department has no objection to placing the amendatory language after the word "involving" as it first appears in subsection (c) of 3486, as suggested by Committee counsel.

Sincerely,

/s/ Byron R. White

Byron R. White

Deputy Attorney General

U.S. GOVERNMENT PRINTING OFFICE: 1969

SUPREME COURT OF THE UNITED STATES

No. 51.—October Term, 1968.

United States, Appellant, v. Joseph Francis Nardello and Isadore Weisberg.	On Appeal From the United States District Court for the Eastern District of Pennsylvania.

[January 13, 1969.]

Mr. Chief Justice Warren delivered the opinion of the Court.

This appeal presents solely a question of statutory construction: whether 18 U. S. C. § 1952,[1] prohibiting travel in interstate commerce with intent to carry on "extortion" in violation of the laws of the State in which committed, applies to extortionate conduct classified as "blackmail" rather than "extortion" in the ap-

[1] Section 1952 provides:

"(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

"(1) distribute the proceeds of any unlawful activity; or

"(2) commit any crime of violence to further any unlawful activity; or

"(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified in subparagraph (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

"(b) As used in this section 'unlawful activity' means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States."

plicable state penal code. We believe that § 1952, the Travel Act, is applicable and thus must reverse the court below.

Appellees were indicted under § 1952 for their alleged participation in a "shake down" operation whereby individuals would be lured into a compromising homosexual situation and then threatened with exposure unless appellees' silence was purchased. The indictments charged that appellees traveled in interstate commerce on three separate occasions, twice from New Jersey to Philadelphia and once from Chicago to Philadelphia, to promote their activities. Specifically, the indictments referred to "the unlawful activity of blackmail in violation of the laws of the Commonwealth of Pennsylvania."

The District Court for the Eastern District of Pennsylvania dismissed the indictments, basing its decision upon Pennsylvania statutes which classify certain acts as "extortion" and others as various aspects of "blackmail." In Pennsylvania, the statute entitled "extortion" is applicable only to the conduct of public officials. Pa. Stat. Ann., Tit. 18, §4318 (1963). Three other Pennsylvania statutes, Pa. Stat. Ann., Tit. 18, §§ 4801–4803 (1963), prohibit "blackmail," "blackmail by injury to reputation or business" and "blackmail by accusation of heinous crime." Each of these three statutes defines the prohibited offense as, *inter alia*, an act committed with an intent "to extort." The District Court believed that the term extortion as used in the Travel Act was intended "to track closely the legal understanding under state law." 278 F. Supp. 711, 712 (D. C. E. D. Pa. 1968). Reasoning from this premise, the court concluded that in Pennsylvania the offense of extortion was covered only by Pa. Stat. Ann., Tit. 18, § 4318, a statute which required that the accused be a public official. Since neither appellees nor their victims were pub-

lic officials, the indictment was therefore defective.[2] The United States appealed directly to this Court pursuant to 18 U. S. C. § 3731 and probable jurisdiction was noted. 392 U. S. 923 (1968).

Although Congress directed that content should be given to the term "extortion" in § 1952 by resort to state law, it otherwise left that term undefined.[3] At common law a public official who under color of office obtained the property of another not due either to the office or the official was guilty of extortion.[4] In many States, however, the crime of extortion has been statutorily expanded to include acts by private individuals under which property is obtained by means of force, fear, or threats. See Cal. Penal Code § 519 (West 1955); N. J. Stat. Ann. § 2A:105–3, § 2A:105–4 (1953);

[2] This conclusion impliedly conflicts with at least two other cases in which prosecutions of private individuals for extortion violative of the Travel Act were successfully maintained in States having a statutory structure similar to that found in Pennsylvania. See *United States* v. *Hughes*, 389 F. 2d 535 (C. A. 2d Cir. 1968); *McIntosh* v. *United States*, 385 F. 2d 274 (C. A. 8th Cir. 1967). *Hughes* involved a prosecution pursuant to North Carolina statutes, one of which prohibits extortion by a public official, N. C. Gen. Stat. § 66–7 (1965), while a second covers blackmailing, N. C. Gen. Stat. § 14–118 (1953). Hughes was charged with involvement in a scheme identical to that in which appellees allegedly participated. *McIntosh*, involving Missouri law, was a prosecution under Mo. Rev. Stat. § 560.130 (1953), a prohibition of threats with intent to extort. However, Missouri also prohibits extortion by certain state officials. See Mo. Rev. Stat. § 29.360 (state auditor), § 30.420 (state treasurer) (1951).

[3] Cf. The Hobbs Act, 18 U. S. C. § 1951 (b)(2), which defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

[4] See *United States* v. *Laudani*, 134 F. 2d 847, 851, n. 1 (C. A. 3d Cir. 1943), reversed on other grounds, 320 U. S. 543 (1944); *United States* v. *Altmeyer*, 113 F. Supp. 854, 856 (D. C. W. D. Pa. 1953); Clark and Marshall, Crimes § 12.17 (6th ed. 1958).

3 Wharton, Criminal Law and Procedure, § 1396 (Anderson ed. 1957). Others, such as Pennsylvania, retain the common-law definition of extortion but prohibit conduct for which appellees were charged under other statutes.[5] At least one State does not denominate any specific act as extortion but prohibits appellees' activities under the general heading of offenses directed against property. See Ill. Rev. Stat., c. 38, § 15–5 (1967).

Faced with this diversity, appellees contend alternatively that Congress intended either that extortion was to be applied in its common-law sense or that, where a State does have a statute specifically prohibiting extortion, then that statute alone is encompassed by § 1952. The Government, on the other hand, suggests that Congress intended that extortion should refer to those acts prohibited by state law which would be generically classified as extortionate, *i.e.*, obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats.[6]

The Travel Act formed part of Attorney General Kennedy's legislative proposals to combat organized crime. See Hearings on S. 1653–1658, S. 1665 before the Senate Judiciary Committee on the Attorney General's Program to Curb Organized Crime and Racketeering, 87th Cong., 1st Sess. (1961). The Attorney General told the

[5] Compare Ala. Code, Tit. 14, § 160 (1959) (extortion), with Ala. Code, Tit. 14, §§ 49–50 (1959) (blackmail), and Ohio Rev. Code Ann. § 2919.13, page 1954 (extortion), with Ohio Rev. Code Ann. § 2901.38, page 1954 (blackmail).

[6] The Model Penal Code as first drafted included the offenses for which appellees are charged under the heading of "Theft by Intimidation." Model Penal Code § 206.3 (Tent. Draft No. 2, 1954). The Proposed Official Draft classifies the same offenses as "Theft by Extortion." Model Penal Code § 223.4 (Prop. Off. Draft 1962). The comments to the original draft indicate that the authors intended these sections to encompass extortionate offenses. See Model Penal Code § 206.3, Comments 1, 5 (Tent. Draft No. 2, 1954).

Senate Committee that the purpose of the Travel Act was to aid local law enforcement officials. In many instances the "top men" of a given criminal operation resided in one State but conducted their illegal activities in another; by creating a federal interest in limiting the interstate movement necessary to such operations, criminal conduct beyond the reach of local officials could be controlled. *Id.*, at 15–17.[7] The Attorney General's concerns were reflected in the Senate Committee Report favoring adoption of the Travel Act. The Report, after noting the Committee's belief that local law enforcement efforts would be enhanced by the Travel Act, quoted from the Attorney General's submission letter: "Over the years an ever-increasing portion of our national resources has been diverted into illicit channels. Because many rackets are conducted by highly organized syndicates whose influence extends over State and National borders, the Federal Government should come to the aid of local law enforcement authorities in an effort to stem such activity." S. Rep. No. 644, 87th Cong., 1st Sess., 4 (1961). The measure was passed by the Senate and subsequently became § 1952.[8]

The House version of the Travel Act contained an amendment unacceptable to the Justice Department. The Senate bill defined "unlawful activity" as "any business enterprise involving gambling, liquor . . . narcotics or prostitution offenses in violation of the laws of the State . . . or extortion or bribery in violation of the laws of the States." S. Rep. No. 644, 87th Cong., 1st

[7] The Attorney General characterized S. 1653, later enacted as § 1952, as "one of the most important" of his proposals. *Id.*, at 15.

[8] In 1965 the crime of arson was added to the definition of unlawful activity in subsection (b)(2). This addition was prompted by a suggestion from the Department of Justice that arson was often used by organized crime to collect under insurance policies and had thus become another source of revenue. See H. R. Rep. No. 264, 89th Cong., 1st Sess. (1965); S. Rep. No. 351, 89th Cong., 1st Sess. (1965).

Sess., 2 (1961). However, the House amendment, by defining "unlawful activity" as "any business enterprise involving gambling, liquor, narcotics or prostitution offenses or extortion or bribery in connection with such offenses in violation of the laws of the State," required that extortion be connected with a business enterprise involving the other enumerated offenses. In a letter to the Chairman of the House Judiciary Committee the Justice Department objected that the House amendment eliminated from coverage of the Travel Act offenses such as "shakedown rackets," "shylocking" and labor extortion which were traditional sources of income for organized crime.* The House-Senate Conference Committee accepted the Senate version. See H. R. Rep. No. 1161, 87th Cong., 1st Sess. (1961).

The Travel Act, primarily designed to stem the "clandestine flow of profits" and to be of "material assistance to the States in combating pernicious undertakings which cross State lines," [10] thus reflects a congressional judgment that certain activities of organized crime which were violative of state law had become a national prob-

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* The relevant portion of this letter, written by the then Deputy Attorney General White, is reproduced in Pollner, Attorney General Robert F. Kennedy's Legislative Program to Curb Organized Crime and Racketeering, 28 Brooklyn L. Rev. 37, 41 (1961):

"[The House amendment] eliminates from the purview of the bill extortions not related to the four above offenses but which are, and have historically been, activities which involve organized crime. Such activities are the 'shakedown racket,' 'shylocking' (where interest of 20% per week is charged and which is collected by means of force and violence, since in most states the loans are uncollectable in court) and labor extortion. It also removes from the purview of the bill bribery of state, local and federal officials by the organized criminal unless we can prove that the bribery is directly attributable to gambling, liquor, narcotics or prostitution."

[10] S. Rep. No. 644, 87th Cong., 1st Sess., 4 (1961) (quoting Attorney General); H. R. Rep. No. 966, 87th Cong., 1st Sess., 4 (1961) (quoting Attorney General).

lem. The legislative response was to be commensurate with the scope of the problem. Appellees suggest, however, that Congress intended that the common-law meaning of extortion—corrupt acts by a public official—be retained. If Congress so intended, then § 1952 would cover extortionate acts only when the extortionist was also a public official. Not only would such a construction conflict with the congressional desire to curb the activities of organized crime rather than merely organized criminals who were also public officials, but § 1952 imposes penalties upon any individual crossing state lines or using interstate facilities for any of the statutorily enumerated offenses. The language of the Travel Act, "whoever" crosses state lines or uses interstate facilities, includes private persons as well as public officials.[11]

Appellees argue that the congressional decision not to define extortion combined with its decision to prohibit only extortion in viloation of state law compels the conclusion that peculiar versions of state terminology are controlling. Since in Pennsylvania a distinction is maintained between extortion and blackmail with only the latter term covering appellees' activities,[12] it follows that

[11] The Government notes that subsection (b)(2) prohibits bribery as well as extortion. Bribery has traditionally focused upon corrupt activities by public officials. See 18 U. S. C. §§ 201–218; 3 Wharton, Criminal Law and Procedure. §§ 1380–1391 (Anderson ed. 1957). Since Pennsylvania's extortion statute covers corrupt acts by public officials, the Government suggests that appellees' construction of "extortion" renders the bribery prohibition superfluous.

[12] Several cases cast some doubt upon the vitality of this distinction as they indicate that in Pennsylvania the terms extortion and blackmail are considered synonymous. See *Commonwealth* v. *Burdell*, 380 Pa. 43, 48, 110 A. 2d 193, 196 (1955); *Commonwealth* v. *Nathan*, 93 Pa. Super. 193, 197 (1928). Federal criminal statutes have also used the terms interchangeably. For example, 18 U. S. C., 1940 ed., § 250, was entitled "Extortion by informer"; today substantially the same provision is captioned "Blackmail." See 18 U. S. C. § 873.

the Travel Act does not reach the conduct charged. The fallacy of this contention lies in its assumption that, by defining extortion with reference to state law, Congress also incorporated state labels for particular offenses. Congress' intent was to aid local law enforcement officials not to eradicate only those extortionate activities which any given State denominated extortion. Indiana prohibits appellees' conduct under the heading of theft, Ind. Ann. Stat. § 10–3030 (Supp. 1968); Kansas terms such conduct robbery in the third degree, Kan. Stat. Ann. § 21–529 (1964); Minnesota calls it coercion, Minn. Stat. Ann. § 609.27 (1964); and Wisconsin believes that it should be classified under threats, Wis. Stat. Ann. § 943.30 (1958). States such as Massachusetts, Mass. Ann. Laws, c. 265, § 25 (1956), Michigan, Mich. Stat. Ann. § 28.410 (1962), and Oregon, Ore. Rev. Stat. § 163.480 (1968), have enacted measures covering similar activities; each of these statutes contains in its title the term extortion. Giving controlling effect to state classifications would result in coverage under § 1952 if appellees' activities were centered in Massachusetts, Michigan, or Oregon, but would deny coverage in Indiana, Kansas, Minnesota, or Wisconsin although each of these States criminally prohibits identical activities.

A striking illustration is presented by *United States* v. *Schwartz*, 398 F. 2d 464 (C. A. 7th Cir. 1968), cert. pending, No. 507, 1968 Term. Schwartz and a codefendant were accused of participating in a venture identical to that in which appellees allegedly participated, *i. e.*, luring a businessman into a compromising situation and then demanding a payoff. The indictment charged that Schwartz traveled to Utah to promote extortionate activities illegal under Utah Code Ann. § 76–19–1 (1953), a statute captioned extortion. Pennsylvania prohibits this conduct under its blackmail statutes. Congress intended that the Travel Act would support local law enforcement

efforts by allowing the Federal Government to reach interstate aspects of extortion. We can discern no reason why Congress would wish to have § 1952 aid local law enforcement efforts in Utah but to deny that aid to Pennsylvania when both States have statutes covering the same offense. We therefore conclude that the inquiry is not the manner in which States classify their criminal prohibitions but whether the particular State involved prohibits the extortionate activity charged.

Appellees do not dispute that Pennsylvania prohibits the conduct for which they were indicted. Accepting our conclusion that Congress did not intend to limit the coverage of § 1952 by reference to state classifications, appellees nevertheless insist that their activities were not extortionate. The basis for this contention is an asserted distinction between blackmail and extortion: the former involves two private parties while the latter requires the participation of a public official. As previously discussed, revenue-producing measures such as shakedown rackets and loan sharking were called to the attention of Congress as methods utilized by organized crime to generate income. These activities are traditionally conducted between private parties whereby funds are obtained from the victim with his consent produced by the use of force, fear, or threats.[13] Prosecutions under the Travel Act for extortionate offenses involving only private individuals have been consistently maintained. See *United States* v. *Hughes*, 389 F. 2d 535 (C. A. 2d Cir. 1968); *McIntosh* v. *United States*, 385 F. 2d 274 (C. A. 8th Cir. 1967); *Marshall* v. *United States*, 355 F. 2d 999 (C. A. 9th Cir.), cert. denied, 385 U. S. 815 (1966). Appellees, according

[13] Extortion is typically employed by organized crime to enforce usurious loans, infiltrate legitimate businesses and obtain control of labor unions. See President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Organized Crime 3–5 (1967).

to the court below, attempted to obtain money from their victim by threats to expose alleged homosexual conduct. Although only private individuals are involved, the indictment encompasses a type of activity generally known as extortionate since money was to be obtained from the victim by virtue of fear and threats of exposure. In light of the scope of the congressional purpose we decline to give the term "extortion" an unnaturally narrow reading, cf. *United States* v. *Fabrizio*, 385 U. S. 263, 266–267 (1966), and thus conclude that the acts for which appellees have been indicted fall within the generic term extortion as used in the Travel Act.

The judgment of the United States District Court for the Eastern District of Pennsylvania is reversed and the case remanded to that court for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE WHITE took no part in the decision of this case.